Supreme Court of the United States.

October Term, 1885. No. 155.

CALVIN LITTLEFIELD

vs.

WM. D. BLOXHAM, Governor of Florida,
Et al., Trustees.

October Term, 1885. No. 174.

EDWARD J. REED

vs.

WM. D. BLOXHAM, Governor of Florida,
Et al., Trustees.

BRIEF OF ARGUMENT FOR APPELLANT,

EDWARD J. REED.

JOHN A. HENDERSON,
For Appellant Reed.

Supreme Court of the United States.

October Term, 1885. No. 155.

CALVIN LITTLEFIELD

vs.

WM. D. BLOXHAM, Governor of Florida,
Et al., Trustees.

October Term, 1885. No. 174.

EDWARD J. REED

vs.

WM. D. BLOXHAM, Governor of Florida,
Et al., Trustees.

BRIEF OF ARGUMENT FOR APPELLANT,

EDWARD J. REED.

JOHN A. HENDERSON,
For Appellant Reed.

Supreme Court of the United States.

CALVIN LITTLEFIELD *vs.* WILLIAM D. BLOXHAM, *Governor of Florida* et al, *Trustees.*	Oct. Term, 1885, No. 155.

EDWARD J. REED *vs.* WILLIAM D. BLOXHAM, *Governor of Florida*, et al., *Trustees.*	No. 174.

BRIEF OF ARGUMENT FOR EDWARD J. REED, APPELLANT.

Very full statements of the case being contained in the briefs of appellant Littlefield and in the appellees' brief in reply, it will be needless to add a third statement here.

The appellees' brief contains a correct account of the origin of Reed's claim, and upon the facts there stated the claim may be rested in the following argument.

From the facts there presented, it will be seen that Edward J. Reed's claim principally arises from a transfer to him of M. S. Littlefield's property in these bonds, as disposed of at master's sale in 1875, upon a judgment obtained in 1872.

Reed purchased directly from one L'Engle, who had himself been the beneficial purchaser at the master's sale. Reed also, acting in the interests of the organization of the Florida railroads, purchased the claims of other parties to these bonds, so that by the end of December, 1881, he had become the owner of the title of Milton S. Littlefield and of every one who, up to that time, had made any claim to the ownership of the bonds, excepting the Trustees of the Internal Improvement Fund of Florida, the Papy trust having been discharged. He was strengthened in the assurance that he was purchasing every interest which conflicted with his object in buying the claims to these bonds, by the fact that Doggett, as master in the Anderson Case, had, in 1875, published a notice requiring all claimants of any interest in the bonds to file their claims in the Circuit Court of the United States for the Northern District of Florida by the "next term," or the said claims would be forever barred. [See Order and Stipulation in Supplemental Record, pages 1 and 2.]

The appellant Reed is before this Court, conceding the force of the position of the trustees appellees, but asserting that if that is not in fact controlling, his own is the only meritorious outstanding claim to the title of Milton S. Littlefield in the bonds. The contest, so far as he is concerned, is therefore a contest with the appellant Littlefield over the merits of their respective titles rather than a contest with the trustees.

It is believed that the claim of Littlefield is wholly without merit. If the bonds are not the property of the trustees, they can be only the property of Reed.

It was he, and he alone, who, up to the very moment, as it were, of the hearing of the cause on its merits in 1882, was properly regarded as the contestant with the trustees for the right of property in the bonds. On the 26th of February, 1882, he stood before the court as the single claimant as against the trustees to the property, the right to which had been publicly and notoriously disputed in a court of justice for eleven years.

The next day, February 27, 1882, Calvin Littlefield, cousin of the M. S. Littlefield whose title had long since passed from him by legal process to Reed, came into court by petition and claimed the title of M. S. Littlefield to the bonds by reason of an alleged chattel mortgage of M. S. Littlefield to him as of July 13, 1871, and an alleged bill of sale to him as of January 11, 1872.

It will be seen, from a glance at the facts of the case as previously rehearsed, that during a litigation over these bonds for more than eleven years, these papers were never known, or asserted by the appellant Littlefield, to exist; that they were never recorded, or notice of their existence given to any of the several trustees who held the bonds at various times for the rightful owner, or to any one else; that during this period had taken place the court sale in the Miller execution against M. S. Littlefield from which Reed traces his title, and that the appellant Littlefield, although having abundant opportunity to know of the sale of M. S. Littlefield's title, slept on his alleged rights and kept silent; that long after the alleged execution of the papers, M. S. Littlefield, in the presumed knowledge of the appellant Littlefield, contended, and his contention was of record, that he had title to the bonds if the Miller suit did not pass title to the purchaser; that from M. S. Littlefield's own testimony he regarded himself and was regarded as owner, notwithstanding the alleged transfers to Calvin Littlefield; that as far back as 1875, A. Doggett, the master in the cause of Anderson *et al. vs.* The Trustees, had published notices of the claim of the trustees, and directing other claimants to assert their rights by petition, to which there was no response from Calvin Littlefield until February, 1882.

Upon these facts it is submitted that the claim of Calvin Littlefield is without merit, in that

(1) The alleged mortgage and bill of sale are void because not recorded.

(2) If M. S. Littlefield, by the alleged transactions between himself and Calvin Littlefield, was a trustee for the latter, the trust was a secret one, and a sale without notice of it passes title away from him.

(3) The claim is barred by the statute of limitations.

(4) The claim is lost by laches, and the claimant estopped by his silence while adverse rights against him were being acquired.

(5) The claim is fraudulent.

(1) *The alleged mortgage is void because not recorded.*

The statute law of Florida recites: "No mortgage of personal property shall be effectual or valid *for any purpose whatever*, unless such mortgage shall be recorded in the office of records for the county in which the mortgaged property shall be at the time of the execution of the mortgage, unless the mortgaged property be delivered."

McClellan's Digest, page 213.

It is not pretended that this mortgage was recorded either in Florida or Georgia.

It is answered, however, by appellant Littlefield [Brief, page 38], that this statute does not apply to negotiable paper. Of course, this answer is no answer because negotiable paper is personal property, and the statute relates to personal property of all kinds.

It is also answered, that the property was not within the State of Florida when it is alleged to have been executed, July 13, 1871. This objection is also without force, because the Florida statute does not in terms or by implication provide that the mortgaged property shall be within the state in order to come within its provisions. We are to read the statute as requiring a recording of the mortgage in the county where the property is, no matter in what state it may be. Any other interpretation would defeat the purpose of the act by making it

possible for a man to elude its provisions by merely placing his property temporarily in another state.

See Kelly *vs.* Crapo, 45 N. Y. 86.

Speed *vs.* May, 17 Pa St. R. 91.

Of course, if the mortgage was invalid and passed no title, the alleged subsequent conveyance of M. S. Littlefield's entire interest also failed to pass title, since the subsequent conveyance was based on the first.

(2) *The claim is barred by the statute of limitations.* The alleged mortgage and conveyance, upon which appellant Littlefield relies to support his title, being without effect, they cease to have the force of sealed instruments. The claim therefore becomes reduced to the level of, and is in fact an action for, the specific recovery of personal property, or an action upon a contract, obligation, or liability not founded on an instrument of writing. The statute law of Florida then applies in bar of the claim. All actions for the specific recovery of personal property, or upon a contract, obligation, or liability, not founded on an instrument of writing, must be brought within three years.

McClellan's Digest, p. 733.

This has not been done, the action accruing, if at all, in 1872, and the intervening petition of the appellant not having been filed till 1882.

There is no *lis pendens* to be urged to prevent the running of the statute, the Schutte case, upon which the appellant relies in resisting the charge of laches, not having been begun till 1877. The claim was, in fact, barred before the Schutte case was begun.

(3) If M. S. Littlefield was, in equity, a trustee for appellant Littlefield, *the trust being a secret one cannot affect the claim of a bona fide purchaser who subsequently acquired his interest without notice of the trust.*

The appellant Littlefield concedes the general principle, that an innocent *bona fide* purchaser for value takes title freed

of a prior equity, but endeavors to escape its force by asserting that Reed is not a *bona fide* purchaser. It is difficult to see why Reed is not entitled to all the equitable rights of a *bona fide* purchaser.

He paid value for his purchase, the consideration, so far as he was concerned, being entirely new.

(4) *The claim is lost by laches and the claimant estopped by his silence while adverse rights against him were being acquired.*

Counsel for Calvin Littlefield devotes some space in his argument to showing that his client's, being a prior equity, must prevail.

It must not be overlooked that this superiority in equity gained by priority in point of time depends for its continuance on good faith and diligence.

Judson *vs.* Corcoran, 17 How. 612.

See White & Tudor's Lead. Cas. in Equity, vol. ii. part ii., page 1000.

As was said by a learned court, the maxim *prior in tempore potior in jure* holds, it is true, wherever it has not been inverted by enactment, or where the benefit has not been lost by misconduct or improvidence; *but it must not be allowed to protect a party who has neglected a requisite precaution to save others from imposition.*

Yeates *vs.* Johnson, 20 Penna. St. 192.

Pistorius *vs.* Knox, 13 Penna. St. 422.

The duty of the appellant Littlefield, if he actually acquired in 1872, as he alleges, the title of Milton S. Littlefield in these lands, was to give notice of the fact to the various trustees who took them from time to time for their owners and also to acquaint every claimant promptly of his rights. This he neither did nor attempted to do. It is conceded [Littlefield's Brief, page 21] that to them of the Miller suit and the execution and under it. It would also seem to be plain that his knowledge extended to the fact that the purchaser at the sale thought

he was really purchasing the absolute title to the bonds. The bonds at the time were regarded as worthless or having only a speculative value. [Littlefield's Brief, page 28.] They were sold at the Miller execution for $307.50. It is not to be supposed that a purchaser would deliberately pay even the small sum of $307.50 for paper absolutely worthless, as it would have been to him, had he known of the alleged fact that the right, title, and interest of the execution debtor had already been parted with, and that even if this were not so there was a prior claim upon the bonds to the amount of over $50,000.

We are irresistibly led to the conclusion, therefore, that the appellant Littlefield knew that the purchaser thought he was purchasing a full and absolute title to the bonds.

Now it is settled law, that if one *suffers another to expend money upon a tract of land, and knows that that other has a mistaken opinion respecting the title to it, and does not make known his claim, he shall not afterwards be permitted to set up a claim to that land against the purchaser. His silence then becomes a fraud.*

Hill *vs.* Epley, 31 Pa. St 334.
Carr *vs.* Wallace, 7 Watts, 394.

The same rule applies to personal property. "A party," said Lord DENMAN, C. J., in Gregg *vs.* Wells, 10 A. & E. 90, "who negligently or culpably stands by and allows another to contract on the faith and understanding of a fact which he can contradict, cannot afterwards dispute that fact in an action against the person whom he has himself assisted in deceiving."

See Bigelow on Estoppel, 452 *et seq.*

Even if these considerations be without force to establish an estoppel against Littlefield, he is still open to the charge of laches.

It is difficult to see how the pendency of the Schutte Case can relieve him of the charge of laches, as urged in his Brief, page 37. While it is true, as decided in the cases he cites, that the pendency of preliminary litigation saves laches for not

proceeding to litigate questions *necessarily* conditioned by the possible decision to be first given in the pending suit, there was no necessary connection between the Schutte proceedings and the present controversy. The Schutte case, as has been seen, litigated the question of a priority of lien; the present controversy is over title to bonds. Calvin Littlefield's title to these bonds is neither stronger nor weaker *on its merits* since the Schutte decree than before the decree was rendered. Nor do the trustees look to that decision to find law determining or conditioning their rights here. The single fact, though, stands out—and it explains the *animus* and shows the speculative nature of the appellant Littlefield's claim,—that that decision gave a greater value to the bonds and made them more worthy his grasp.

The fact, that by a decision the property became sufficiently valuable to kindle a desire, cannot be urged either as an argument for the legitimacy of the desire or as an excuse for not pressing it before. Had the Schutte decree been the other way, giving a prior lien to the Dutch bondholders and denying the trustees' claim of lien, Calvin Littlefield doubtless would not have intervened in the suit, but would have left to Edward J. Reed and the trustees the contest they had begun years before over these bonds. It is a novel ground on which to defend laches, that the neglected claim has become valuable. Yet this is the defence the appellant Littlefield makes.

(5) *The claim is fraudulent.* It would seem to be plain from the above facts that Littlefield's silence is itself a fraud. The additional and controlling fact appears, however, that the claim has upon it the *positive* marks of fraud. Until very long after the sale under the Miller execution, Littlefield almost confessedly had no claim to the bonds and never pretended to assert any.

M. S. Littlefield, who is alleged to have executed the papers that give a basis for the appellant Littlefield's claim, testified repeatedly that Calvin Littlefield had no such claim. The

following extracts from M. S. Littlefield's testimony are in point:

[Record, page 77.]

MONDAY, *November* 29, 1875.

Milton S. Littlefield, a witness in behalf of petitioner, Robert J. Washington, being sworn, says: General Jackson, the attorney of T. Mayhew Cunningam, trustee, told me that he had filed the $103,000 of bonds of Pensacola & Georgia Railroad Company and Tallahasse Rail[road] Company with the master, A. Doggett. *I claim these bonds as my individual property, unless my title was divested by a sale made on the second day of August last, in the suit of J. H. Miller* vs. *Milton S. Littlefield;* this suit was on the equity side in the United States Circuit Court. These bonds were purchased by me of Colonel Edward Houston as my own property at the same time I purchased other property and securities of him.

[Record, page 81.]

Q. State whether the $103,000 of P. & G. & T. R. R. Company bonds filed in this case by T. M. Cunningham, as trustee, were to your knowledge ever claimed to be the property of any other person after you purchased them? If so, when, where, and by whom were they so claimed?

A. To my knowledge no person ever claimed those bonds as their property, or that the title to them, after Mr. Houston should have been paid, was in any one else than myself, excepting that the trustees of the Internal Improvement Fund and the State of Florida commenced a suit against myself and others in March, 1872, claiming the bonds to have been purchased for the benefit of the state and trustees, praying to the court that they should be delivered to the trustees for cancellation.

See also Record, page 112.

There is an attempted explanation of this testimony on page 537 of the record. It clearly shows, however, that the claim of Calvin Littlefield is part of a concerted scheme of the Littlefields, concocted after the course of the Schutte litigation gave value to those bonds, to avail themselves of the pleadings in that litigation to have the bonds restored to M. S. Littlefield, whose fraud has been the parent of all the complications in the case.

It is almost needless, in view of the above considerations, to examine in detail the explanations made by the appellant Littlefield in defense of his title, or to answer his animadversions upon the title of Edward J. Reed.

If Calvin Littlefield knew that adverse rights or claims were being acquired in his silence, and because of it, as, from his extensive information of Florida railroads, and of these transactions in particular he must have known, his silence is fraudulent.

Nor will the allegation that he received erroneous legal advice assist to relieve him of the charge of wilful laches when the obligation to press his claim was upon him and not upon his attorney.

The pendency of the Schutte Case, begun in 1877, cannot avail him to avoid the charge of laches before that time. But it had nothing in it to protect the appellant Littlefield even after it was begun. It was a litigation over a priority of him, not over the *status* of his claim. The assumption to the contrary is clearly an after thought to assist him in defending his claim. The position of the appellant Littlefield [Littlefield's Paper Book, p. 37], that he is not barred in not presenting his claim earlier than he did, because no order of court fixing any time for the presentation of claims is found in the record, is based upon a misstatement of the facts. Such an order is actually found in the record [see Supplemental Record, page 1], which he failed to respect. It is difficult to reconcile his statement that he did not know of this order, with the careful knowledge of Florida railroad affairs and of all the transactions in this case he seems to have had.

The pretension in the brief of counsel, of Calvin Littlefield's hopeless ignorance of every fact arising in this controversy seeming to militate against his title, of course cannot avail him in the face of the real facts. He was a cousin of Milton S. Littlefield [page 498]; a stockholder of the J. P. & M. R. R. Co., whose claim to these bonds was long asserted [page 501]; a director of the company [page 501]; a creditor of the company

[page 501–2]; he had been a creditor of M. S. Littlefield for a loan to a considerable amount, and did not know that the sum had ever been returned to him, but if so it had been parted with substantially as before [pages 498–499]; had even lost his bill of sale [page 506], and with no pretence of having had either mortgage or bill of sale till February, 1882. In the meanwhile his attorney, who he claims lost his original, and who at the same time is charged with having it in his possession [page 429], was used as a witness in this very litigation before the master in November, 1875—Milton S. Littlefield being continuously asserting such right to these bonds, as was entirely inconsistent with the *bona fide* character or even of the existence of Calvin Littlefield's alleged bill of sale and mortgage [pages 79–83].

The several alleged weaknesses of appellant Reed's title to these bonds may now briefly be considered.

(1) It is first of all said [Littlefield's Paper Book, p. 10], that the bill of complaint in the Miller suit, and the amendment thereto, were filed without joining the appellant Littlefield as defendant. This statement of fact constitutes no argument either for Calvin Littlefield or against Reed. Calvin Littlefield was not joined because there was no means of knowing or supposing that his claim existed. If he had such a claim at the time, he studiously concealed it from everybody. To urge the consequences of this fact as an element of weakness in Reed's case, is mistaking the argument derived from Littlefield's neglect. If anybody is to be prejudiced by this neglect, it certainly should not be Reed.

(2) Reed is said not to be a *bona fide* purchaser for value of Washington's title as purchased at judicial sale [Littlefield's Paper Book, page 15]. To this it is only necessary to answer, that Washington purchased M. S. Littlefield's title to the bonds at the Miller sale as trustee for whatever party L'Engle should name. L'Engle, having assigned his claim to appellant Reed

for a good and valuable consideration, directed that Washington should stand as trustee for him. [See Record, pages 487 and 489 and page 518.] Washington was and is in no other position to appellant Reed than that of a *dry trustee* to a *cestui que trust*. The fact that a formal transfer of title may not have been made between Washington and Reed cannot, in view of the nature of the trust, be regarded as of any force to destroy the equities of the latter's case.

(3) It is claimed that the amount for which the bonds were purchased by Washington at the Miller execution made the sale fraudulent.

But it must be remembered that the property, according to Littlefield's own argument, had only a speculative value. This value was indeed very much less than $307.50, for which the bonds were purchased. They were indeed not deemed by appellant Littlefield worth fighting for till the Schutte decree in 1882 gave them value. This view shows that Washington's, L'Engle's, and Reed's successive claims, being all for a valuable monetary consideration in the purchase of comparatively worthless articles, are invulnerable as *bona fide* purchases for value.

(4) It is said, however, that a new consideration must be paid by subsequent purchases before a prior equity will be cut out, and Reed's was not a new consideration.

The answer to this is found in the preceding pages. The appellant Littlefield is not the holder of a prior *equity*, his studied silence when Reed's rights were being acquired amounting to *fraud*, which, as has been seen, protects even a judgment creditor against the fraudulent claimant.

(5) Nor is there force in the position that the purchase at the sale under the Miller execution was made, *pendente lite*, and therefore subject to the exigencies of the case, one of which was the intervention of appellant Littlefield and the presentation of his claim.

It is submitted that the doctrine of constructive notice by *lis pendens* cannot in fairness be invoked against Reed's claim. A *lis pendens* is notice to purchasers only so far as the rights of the parties to the controversy at the time of the purchase are concerned. "The effect of the maxim, *pendente lite nihil innovetur*, is to render a conveyance * * * * *subservient to the rights of the parties to the litigation. As to the rights of these parties*, the conveyance is treated as if it had never had any evidence, and it does not vary them."

1 Story's Eq. Juris. sec. 406.

Calvin Littlefield was not a party to the present suit at the time of the Miller execution. There was no *lis pendens* as to him. His subsequent intervention in the case was the same as if a new suit had been brought and entitled by itself.

The decision in Tilton *vs.* Corfield, 93 U. S. R., relied on by appellant Littlefield, will not help him. It is true that a purchaser *lis pendens* takes subject to all amendments in the case, but, as has been seen, there was, in truth, at the time of Reed's purchase, no *lis pendens* so far as Littlefield's claim was concerned; and then, again, the intervention of Littlefield was not in reality an amendment to the case but a new case entitled for convenience as the main case.

Moreover, the doctrine of *lis pendens* has never been carried to the extent of making a *lis pendens* constructive notice of a prior unregistered deed.

1 Story's Eq. Juris., Sec. 406.

(6) Some stress is laid upon the fact that at the time of Washington's purchase the bonds were burdened with a trust. It is said that this trust was afterwards discharged by M. S. Littlefield for the benefit of Calvin Littlefield. This nowhere appears from the record. The present appellant, as well as Calvin Littlefield, may claim that the trust was discharged for his benefit. Indeed, the fact that Milton S. Littlefield all this time and long afterwards claimed these bonds as his own [see Record, pages 77, 81, and 112], expressly negatives the

idea that the trust was discharged for the benefit of Calvin Littlefield.

The remaining objections to Reed's claim may briefly be dismissed.

It is objected that the Miller execution was hasty and that the terms of the decree under it were not complied with. This is hypercriticism. Everything was careful and regular in the sale. The terms of the decree were literally complied with—the decree providing for the fact that certain securities were outstanding and could not be delivered to the master before the sale.

It is said that a confirmation of the sale was not made. But the sale was made under the express directions and in the exact way directed by the court, and its return was duly filed.

[See Record, pages 175 and 182.]

The appellant Littlefield also contends that he was never given an opportunity to come into the Miller suit if he had desired to. But confessedly, he knew of the Miller proceedings and sale and could have given notice of his claim at the sale, just as any *bona fide* creditor would have done in seeking to protect his rights.

Very late in his argument appellant Littlefield endeavors to show that L'Engle, and inferentially Reed, who took his title, are precluded from claiming these one hundred and three bonds by reason of the fact that L'Engle participated in a certain issue of Florida Central Railroad bonds. But this idea is completely refuted by the testimony of L'Engle.

[Record, pages 534 to 545.]

Of course, the animadversion of counsel, that this testimony is not to be relied on, need not be considered, because there is no attempt to deny the veracity or impugn the credit of the witness or to rebut his testimony by that of others.

It is believed to be apparent, from the foregoing discussion, not only that the claim of this appellant to these bonds is the

more meritorious of the two, but that the claim of Calvin Littlefield, in reality, sinks to the level of a mere speculative enterprise of Milton S. and Calvin Littlefield, if it is not actually fraudulent. The very fact that Calvin Littlefield did not attempt to assert his claim till more than ten years after litigation over the title to these bonds had been begun, and only after the decree of this court had given some value to them, stamps the claim as speculative. The continued assertion of title in Milton S. Littlefield during this period, coupled with such knowledge in Calvin Littlefield of Florida railroad affairs and interest in them, as is inconsistent with his ignorance of the various claims tending to embarrass the assertion of his own, if he had any, abundantly warrants the belief here urged that the claim is fraudulent and not deserving of consideration. In this view Edward J. Reed stands clearly entitled to these "103 bonds" if the court should not require their surrender to the Trustees of the Internal Improvement Fund for cancellation

JOHN A. HENDERSON,
For Appellant Edward J. Reed.

J. Aug. Johnson,
Of counsel.

Office Supreme Court U. S.
FILED.
MAR 13 1886
JAMES H. McKENNEY.
CLERK.

117-419

Supreme Court United States.

OCTOBER TERM, 1885.

NO. 174.

CALVIN LITTLEFIELD,

vs.

WILLIAM D. BLOXAM, *et al.*

EDWARD J. REED,

vs.

WILLIAM D. BLOXAM, *et al.*

Brief in Reply to Argument for Appellant Reed.

H. BISBEE,
For Calvin Littlefield.

R. O. POLKINHORN, Printer.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1885.

CALVIN LITTLEFIELD
vs.
WILLIAM D. BLOXHAM *et al.*

EDWARD J. REED
vs.
WILLIAM D. BLOXHAM *et al.*

No. 174.

Brief in Reply to Argument for Appellant Reed.

Reed does not controvert the claim of appellees, and his position is that if, perchance, the contention on their part cannot be supported, then he asks the Court to investigate his title. The argument on behalf of appellees does not resist the claim of Reed, in case their claim is denied.

These facts, with other facts conceded in the oral argument by counsel for appellees, establish that there is *no real controversy between Reed and appellees*, and that the railroad company, now owning the railroad, is using the names of both of those

parties to avoid paying a lien upon their property subject to which it purchased it.

This is further established, from the fact that Henderson, whose name appears to the brief for Reed, is the attorney of the Florida Railroad & Navigation Co., that now owns the road, and it is improbable that the attorney of the company would be engaged in establishing, for Reed's benefit, a debt against that company of over $300,000.

---

2. The first point made in the argument for Reed, against the title of appellant, Littlefield, is that the mortgage and bill of sale to him are void, because not recorded.

(Reply.) That the statute recited, with respect to chattel mortgages, does not apply to negotiable paper.

While the instrument is in part in form of a mortgage, it is in effect an assignment of property and title thereto, subject, however, to the right of paying the debt by the 1st of Jan'y, 1872. The debt not being paid, the legal title vested in the assignee, subject to the trusts specified in the hands of Papy. The property was incapable of manual delivery.

3. Reed also claims that our claim is barred by the Statute of Limitations and doctrine laches.

(Reply). Statute of Limitations and doctrine laches, has no application to property in custody of

court and subject to trusts, the expense and duty of discharging which belongs to the assignor.

Angel on Limitations, p. 204, (note 3,) and p. 346.

20th, How. 128.

4. Reed claims that Littlefield stood by and saw him part with his money for these bonds, and is therefore estopped.

(Reply). Not a scrap of testimony to prove that Littlefield knew that Reed ever claimed any interest in these bonds, until after the assignment by L. Engle to him Dec. 23, 1881. Littlefield's petition was filed February 27th, 1882, (p. 478), and Reed's answer was filed May 26, 1882, (p. 489).

Reed abandons all claim to the bonds, except as derived from the judicial sale in the Miller suit. The decree (p. 176) did not authorize a sale till after *two conditions* had been complied with by the master. 1st. The master was to ascertain the amount and extent of the trust in Papy's hands. 2d. He should reduce the bonds to possession.

Neither of these conditions were complied with, and therefore the sale was null and void for want of authority in officer to sell.

1 Wall., 627, 636.

2 Wall., 609, 640.

2 How., 43, 60.

The sale was never *confirmed. This is admitted in Reed's brief, page* 14. Nor would a confirmation validate an unauthorized sale.

1 Wall., 627, 636.
2 " 609, 640.

It is also claimed that Littlefield's *title is fraudulent.*

(Reply). This is a gratuituous assumption. Littlefield proved his title by assignment by the plainest and most convincing legal testimony known to judicial proceedings, to wit: by a subscribing witness, by his attorney, who held for collection, (by production of a sworn copy,—the original being lost),—and gave the name of the lawyer who drew it, and that it was in his hand writing. When Calvin Littlefield was asked to state when, and where, and in whose presence the settlement and accounting took place between him and the assignor, he answered "*on the 13th of July, A. D.* 1871, *in Jacksonville, Florida, Mr. W. B. Knight, Mr. Aaron Barnett, Mr. A. J. Peeler, and Gen'l Littlfield, of course, and a little over* $50,000 *was found to be due me.*" (Rec. p. 499.)

Overwhelmingly established, appellee did not call a witness whose name was given to dispute the claim, nor call on witness for an itemized account.

Under these circumstances, *we protest against the right of counsel to* declare the claim fraudulent, simply because he could not assail it on any legal grounds.

If ever a claim was established by legal testimony free from suspicion, this is; and its adversaries apparently conceded the claim, but expected to defeat it by establishing superior rights in others, and not by impeaching the *bona fides* of the claim itself. Such adversaries doubtless knew that the transaction between the Littlefield's, out of which the claim arose, could be established by a half dozen reputable business men of New York City.

How then, and upon what pretense is it fraudulent?

Is there any law forbidding a man lending money to his relatives? Should not the claim be established or disprove the same as evidence between any other parties?

---

6. *Circumstances under which Littlefield became assignee without notice of any claim on the part of the State, Board of Trustees, or of any other person.*

Littlefield became assignee while the bonds and stocks were held in trust by Papy; the trust being declared by Papy May 19, 1871. (Original Brief, p. 21.) If Littlefield, before he took the assignment, had examined this declaration of trust, and the agreement therein referred to between Houston and Hopkins & Co. (original brief, p. 19), would he have derived *any knowledge or notice that the*

Trustees, or State of Florida, claimed any interest in these bonds? Certainly not.

The said agreement is dated April 12th, 1871; the declaration of trust is dated May 19th, 1871, *over two years after* the sale of the railroads by the Trustees, and *over one year after* the exchange of bonds between the State and J., P., & M. R. R. Co.

What possible clue or notice is given in either of those documents, that any persons or corporations claimed any interest or asserted any title to these bonds except Hopkins & Co. and Houston, and the other creditors therein named, to wit: Clingman, Rogers, and Bayne, of New York city. If said agreement had been examined July 13th, 1871, the date of assignment to Littlefield, would it not have given him notice that Milton S. Littlefield was financially embarrassed, and that Clingman, Rogers, and Bayne had sued him, and had endeavored to *attach those bonds* in the hands of Houston as the property of thier debtor? Most certainly; for the agreement and the declaration of trust both recite that such suits had been brought.

Would not such an examination have established that the bonds were the property of Mr. S. Littlefield, *put in Houston's hands as security for the payment of a draft* (not showing that the draft was given in payment of the bonds). That Houston, Hopkins & Co., Rogers, Bayne (bankers and brokers in New York City), and T. L. Clingman, *were asserting that these bonds* were the property of Mil-

ton S. Littlefield, and were being circulated, assigned, attached, transferred, and treated in the chief commercial centre of this country as *his property. The reading of these instruments prove all these facts to be true*, and attention is again directed to them.

Such being the indisputable facts, was it not natural and praiseworthy in Calvin Littlefield, to hasten to Florida, where his debtor resided, and exact from him security for his debt, by an assignment of these bonds, before they were burdened with any more liens of trusts? Unquestionably; and the judicial mind will readily yield assent to this.

When the written contracts among his creditors in New York, stated that these bonds were Littlefield's, and were being treated as such in a great business centre, where Calvin resided, there was an utter absence of any notice that the bonds were not the property of the person, whose apparent ownership among business men was obvious.

It *is too clear for controversy* that up to the date of the settlement in Florida in Jacksonville, Calvin Littlefield had no notice and no suspicion that the State or its trustees asserted any claim to the bonds from transactions that occurred *one and two* years before.

Though Papy, the trustee, resided at the capitol of the State, there is no pretence that at this time,—

date of assignment to Littlefield,—either State of Florida or its trustees, had served any notice upon him that they claimed the bonds or any interest therein.

Suppose it had been the duty of Calvin Littlefield (as it was not), when he went to Florida, to demand security for his debt, to have inquired of the trustees if they claimed any interest in these bonds, what information could he have obtained? Had he been put *upon inquiry* (as he was not), what would that inquiry have resulted in? Pursuing the inquiry, he would have found that as early as Oct. 23d, 1869, deeds from the trustees of both of the railroads had been recorded, reciting over the signature of each of the trustees, including the Governor, that payment in full of *all the purchase money*, had been received. Rec., pp. 366 to 372 inclusive.

Both the deeds are dated April 8th, 1869, less than a month after the roads were sold.

Would not the finding of such deeds put the inquirer to rest, and have justified him in the belief that neither State nor trustees could have any interest in these bonds, the Governor, Harrison Reed, and all the other executive officers *having admitted, over thier seal and signature*, receipt in full of purchase money of the roads.

Suppose he had pursued his investigation a step further, what would he have discovered? He would have found from *the Records kept by the trustees themselves, that on June 17th*, 1869, the trustees met and adopted a resolution, stating that full con-

sideration had been received in bonds and money, and that the money received, $472,000, had been passed over to Swepson, as the confidential agent of the trustees, who had been instructed to purchase therewith the *outstanding bonds*. (Rec., pp. 373, 374.)

The report of the two trustees, adopted by the Board, reads as follows:

"We received $806,600 first-mortgage bonds of the P. & G. R. R. Co. at par, and $153,700 of first-mortgage bonds of the T. R. R. Co. at between 94 and 95 cents on the dollar, and that the difference between the sum represented by these bonds and the sum bid for the bonds, was turned over by us, as required by a resolution of your board, to George W. Swepson, as confidential agent of said board, to take up the outstanding bonds of said companies."

Rec., pp. 373–4.

This resolution of trustees was not only conclusive evidence that neither trustees nor State claimed these bonds, but was convincing evidence to him, Littlefield, that the trustees had money in the hands of their agent *to pay these very bonds* as soon as the trusts in Papy's hands were discharged, and possession of the bonds could be obtained.

Could there be a stronger case, showing that inquiry justified a purchase, and would have *dispelled even a suspicion or doubt*, had any been raised, that the title in these bonds were in Milton S. Littlefield, subject to the trusts specified.

And it must be borne in mind that up to this time, July 13th, 1871, the fact of the payment of the purchase money, as resolved by the trustees, *was not asserted to be a fraud.*

Few persons, if any, except the parties to the transaction, knew, in July, 1871, that the alleged payment was a fraud, notwithstanding the resolves of *the board* of trustees. Swepson was reported to be a millionaire, and was at that time, and the balance of money had been turned over to him, as it had been previously turned over to other agents, on the sale by trustees of the Florida R. R. from Fernandina to Cedar Keys, and Florida Central R. R. from Jacksonville to Lake City.

The public did not know of this alleged fraud of non-payment of the balance of the purchase money until March 20th, 1872, when the Trustees and the State—a new Govornor and New Attorney General being in office, by the impeachment of Governor Reed—brought the suit in Duval county, to collect the balance of purchase money, and for the surrender and cancellation of the 103 bonds.

There was no avowal by the trustees, and no claim by them that the payment of purchase money was not *bona fide*, until this suit was brought March 20th, 1872, against J., P., & M. Co., and Milton S. Littlefield.

But the rights of Calvin Littlefield, as a *bona fide* assignee, for value, without notice, had become vested then; he had taken the bonds in satisfaction of his debt, and he could not reverse his position.

He had acquired *a vested right which cannot be destroyed.*

And what was the result of that suit in the State Court ?

The Supreme Court held that, under the alleged agreement between the Governor and Milton S. Littlefield, Pres., of J., P., & M. R. R. Co., the trustees *were not entitled to a decree for the balance of the purchase money*, and to another decree for the surrender of the bonds, to be credited on the first decree.

16 Fla. R. pp. 725–727 ;
Also, Opinion of Justice Wescott, Rec. pp. 118 to 123.

See *decree*, supplemental Record, p. 71, original, which provided that upon receiving the bonds "the *amount thereof* be credited upon the decree in this cause of April 2d, 1874." *It was therefore res judicata, before Littlefield filed his petition in this case*, that the trustees were not entitled, *under the same state of facts to the decree appealed from in this.*

The question was *res adjudicata* in the State Court, between State and Trustees on one side, Mr. S. Littlefield and J., P., & M. R. R. Company on the other, *that under the alleged agreement with the Governor, of June 8th*, 1870, *the identical agreement, alleged in court below*, the Trustees could not

recover these bonds, and give credit for them on the decree, for the lien, for the whole amount.

The trustees are estopped by the record, which is in evidence; and appellant, Littlefield, *being the assignee* of Milton S., has a clear right *to plead the estoppel and rely upon it.* The suit in the State Court was commenced before the trustee claimed the bonds in the Anderson suit; was prosecuted to judgment, *which stands of force, and unreversed, and is a bar to this suit upon the settled law of the land.*

The trustees are asking for relief against the *assignee*, which, it had been solemnly adjudicated they were not entitled to against his assignor. Unless the principle of *res adjudicata* are to be overturned, the trustees *are barred from prosecuting this suit*, and this is the end of the question.

Littlefield, the assignee, not having notice of any claim on the part of the State, it is wholly immaterial what representations his assignor made to the Gov. June 8th, 1870, by his letter of that date. Rec. p. 58.

On that date Milton S. Littlefield did not have the possession of the bonds, Houston held them as a pledge to secure the payment of a draft under contract of May 13, 1870. Original brief p. 17. Littlefield's title was not complete till the bonds were redeemed from Houston's pledge. The transaction of Littlefield with the Governor, on June 8th, 1870,

was in his representative capacity as President of J., P., & M. Co., but his contract of purchase of Houston, *nearly a month previous, was in his individual capacity*, in which Calvin Littlefield dealt with him. As President, he did not in terms *contract* to deliver up the bonds to the Governor or trustees, but *he represented* to the Governor, that in addition to the bonds already deposited with the trustees he had "*secured*" the $110,000." See Reed's affidavit p. 57, in which Gov. Reed says "he was assured, and believed from evidence before him (the letter), which he deemed reliable that the J., P., & M. R. R. Co., *had purchased and contracted for the purchase* of all the outstanding bonds," except $227,-250. The Governor only claims that he believed from the representations contained in the letter, that *the Co.* had contracted to purchase these bonds. The point of inquiry in this connection is, did this representation to the Governor operate *to pass the title to the bonds which* Littlefield (M. S.) did not possess, and were then hypothecated with Houston. It is simply impossible that such a representation operated to *pass the title out of M. S. Littlefield*, so that he could not assign the bonds to Calvin, who had no notice of such representations, to the Governor. The Governor trusted and acted, in exchanging the $4,-000,000 bonds, on the faith that the J., P., & M. Co., had *contracted for the purchase of these bonds.* Concede that the Governor parted with the State bonds on the faith of such representations that the Co. had contracted to purchase the bonds, the result

is of no consequence. Calvin Littlefield, in July, 1871, took his assignments on the faith and belief, springing from written contracts between a citizen of Georgia, Houston, and citizens of New York city, Hopkins Co. where he lived, that the bonds were the property of M. S. Littlefield, his assignor, subject to certain trusts, *and without notice of any claim* of the J., P., & M. R. R. Co., *or of any representations* by that Co. through its President, or by M. S. Littlefield to the Governor that said Co. had contracted to purchase the bonds for the State. On the contrary, as shown, Calvin Littlefield became assignee with notice by the records of the trustees, that the trustees set up no claim to the bonds, *but had the money in the hands of their agent*, Swepson to pay them.

It is the settled rule that a sovereignty, as a litigant, has no higher or more sacred rights than the humblest citizen. Suppose Jay Gould had bargained with Mr. S. Littlefield, or the J., P., & M. R. R. Co., on June 8, 1870, for these bonds, and paid for them, but Littlefield had not the possession of them, was yet to obtain them; and that Calvin Littlefield afterwards, *without notice of this bargain*, or of anything to put him upon inquiry, but seeing the bonds dealt in as commercial securities, among other persons, treating them as the property of M. S. Littlefield, took the bonds in payment of his debt, who, Gould or C. Littlefield, would have had the best title in equity? Unquestionably, Calvin Littlefield.

Precisely this question arises in *Judson* vs. *Corcoron*, 17th How., 612 ; in *Spain* vs. *Hamilton*, 1st Wall., 604, and 7th Wheaton, 57; and the claim of the junior assignee, was sustained, on the ground that he took without notice. The doctrine of those cases settle this, on this point. But the case I have supposed is stronger than the case of the State of Florida, for the reason, as I have shown, that its trustees asserted no claim, *but held out, by their resolution, that they had the money in their hands with which to pay those bonds when presented.*

The bonds, being negotiable, payable to bearer, the State should, if it claimed them, have taken *earlier steps* to impound them, *and prevent their transfer* to innocent dealers. It did not do so, *but waited three years after* the sale of the roads, and then, on the 20th of March, 1872, brought suit, setting up both a vendor's lien for the whole balance of the purchase money and a claim to those bonds too. The State and trustees were both complainants in that suit; the former conceded *the latter had a* FIRST LIEN, for full amount due, which made the *former alone* interested to prosecute the claim for the surrender of the bonds.

The J., P., & M. Co. and M. S. Littlefield, *appellant's assignor, defended and resisted the claim for the surrender of the bonds successfully*, but acquiesced in the claim for a decree for the full balance of the purchase money.

This was *res adjudicata* as to the State and trustees. They plead this decree in the State Court *in defense* to the Schutter bill (Rec. original, p. 1062 to 1064), and that these 103 bonds "were still outstanding," as shown by "*a public record, a full notice to all the world that said bonds were and are still outstanding and unpaid.*" (Rec. p. 1064, original; see also, Rec. p. 1078, denying any priority of *contract with Littlefield.*

The trustees are, therefore, estopped by their pleading, and by the record, *between same parties representing the same interest.*

The State is estopped, having consented to the decree in the State Court, giving trustees a first lien and decree for payment out of the property, upon which, as holders of bonds of J., P., & M. Co., it had a second lien. The State, as trustee for Schutter *et al.*, holders of the State bonds, being a party to the litigation and decree in the State Court, is not only estopped, but Schutter, *et al.*, her *cestui que trust*, are estopped also, upon well settled principles, from re-opening the decree in the State Court.

In their Schuttee bill, in the Court below, they attempted to re-open the question, but on the facts being found so strong against them they abandoned the effort, and practicably consented *that all these bonds were outstanding*, and that the trustees should collect the money out of the property, on which their lien rested to pay the bonds with, (see their bill, Rec. pp. 419 to 436, and see, especially, para-

graph 16 of their bill, p. 428), and it was decreed. (Rec. p. 475.)

Paragraph 25 of this bill, p. 433, shows that Schutter, *et al.*, knew when this bill was filed, that these 103 bonds were in litigation in the Anderson suit, and alleged "that said bonds are claimed by divers persons under *some contract* with said Littlefield" (M. S.), with notice that the bonds were paid for out of money" arising from State bonds.

But the issue being made on that point by the answer of the Trustee, Schuttee, *et al.*, did not press the point, conceded the bonds were outstanding and that they should be paid for out of the property prior to their claim. *Were they not competent to waive any right to have those bonds surrendered and cancelled?* The State had no further interest, its bonds being declared unconstitutional and void. *The only interest in the world* that could object to the claim now made by Calvin Littlefield was that of Schutter *et al.*; and to avoid litigation (see their bill, p. 228), and hasten that litigation to a decree, and reorganization of the roads, under a new name, they waived any and all questions as to the ownership of the 103 bonds, and consented to a decree for their payment out of their property. Their trustee, Angler, bought the property subject *to the decree* that if the purchaser should not pay to the trustees the money to pay those bonds with within one year, the road should be resold for that purpose. (Rec., p. 476.)

The question then is, were not Schuttee *et al.*

competent to waive this right of contention, and consent to what they did consent to?

The case of *Swann* vs. *Wright's Executors*, is, on all fours with this case, and, it is submitted, necessarily decides it unless overruled. 110 U. S., 590.

[*That case was decided after the decree in this case appealed from was rendered.*]

On p. 602, 110, U. S. R., the Court said: "If the receiver and trustees referred to in the bill were guilty of fraud and imposition in respect of the Wright claims, *it was competent for the bond-holder and the parties interested in the property before title passed to the purchaser, to waive any grounds of complaint which they may have had on that account.* They had the right to acquiesce and, so far as the record discloses, *have acquiesced* in their allowance, *thereby consenting* that the proceeds of sale to the amount of such claims should be applied in payment thereof, rather than in satisfaction of their own demands."

So in the case at bar, Schuttee, *et al.* were competent to waive *the right of having* the 103 bonds surrendered and cancelled, though they were outstanding through fraud, which they did not care to spend the time to investigate, and have acquiesced in their payment as in the case cited. In principle, nor upon the facts, can the two cases be distinguished, nor any discrimination drawn, except in favor of the case at bar, on the ground that the identical question upon the same facts had been decided against their trustee, the State in the State

Court, and the question was *res adjudicata* when Schuttee, *et al.* commenced in their own name. The State, in the State Court, had consented, and its *cestui que trust*, Schuttee, *et al.*, subsequently in their own bill consented, that these 103 bonds should be paid out of this property.

And the judicial mind can readily assent to this result, for appellant Reed's claim being brushed aside, *there is no one* opposing C. Littlefield's right to be paid for these bonds.

Schuttee *et al.*, the bondholders, having the second lien are not before the Court opposing Littlefield. As shown, they have consented, aquiesced and are estopped.

The appellees *are not the trustees* of Schuttee *et al.*, and have no *authority* to represent them before this Court, and it is not true that the appellees' contentions here, is in the interest of Schuttee *et al.*, for *it is conceded* that neither Schuttee *et al.* or their former interest exists *or did exist*, when the decree in the court below was rendered or appealed from. They are neither parties to the record nor have they authorized the trustees nor Sir Edward Reed, nor any one else to come into this case to set up any interest in their name. *Their conduct is that of honest men. They consented to the payment of these bonds*, whoever might be the legal holders when no other persons on earth could either consent, or oppose. And they are abiding the result.

For whose benefit shall this decree be sustained? obviously, for the benefit of the present owners of

the road, a set of adventurers from England and New York, who bought the property with this lien upon it, and are seeking to perpetrate a fraud upon other's rights, and put the amount of the lien in their own pockets.

The whole scheme is an *after thought*, conceived after the sale and purchase, subject to this lien, and it is nothing more nor less than attempted plunder and robbery. Speaking of this view of the case in *Swann* vs. *Clark*, 110 U. S., R. p. 607, this Court said: "The railroad company was a purchaser *pendente lite*, and was not entitled to be made a party to issues pending and undetermined when it purchased." So here the purchasers of this property, now the present owners are not entitled to be parties, nor to be heard, as to the ownership of the 103 bonds,—*an issue pending in the Anderson suit—when they purchased.*

Again, in Swann *vs.* Wright's Executors, Supra, p. 600, the Court said: "The property was sold with the possibility, present in the minds as well of the parties in the foreclosure suit as of the purchasers, that the latter would be required to take *subject to a lien* in behalf of Wright's estate; and, consequently, that to the extent of such lien, the first mortgage bond-holders would fail in having their demands satisfied out of the property. If, therefore, the appellants were granted the relief asked, the result—upon his theory of the respective rights of himself and the bond-holders—would be not to benefit those who caused the property to be sold, but in effect, to

give the amount of Wright's claims to Swann; or, if not to him, then indirectly to the company, to which he had conveyed, and which must assert its rights, whenever assailed, under one who has taken title expressly subject to a lien in favor of those claims.

The reasoning and principle here announced is completely applicable to the case at bar in every respect. The trustees under some color of equity arising from transaction, of which C. Littlefield had no notice, and in which trustees have ceased to have any interest whatever, are allowing their names to be used by the present company owning the road, to gain a benefit to itself, and steal away the rights of Littlefield.

But there is another ground upon which an equity arises in favor of Littlefield.

His stock, covered by the same assignment and bill of sale—4,110 shares of Fla. Central R. R. Co.—[total stock of company being then 5,500 shares]—*has been used to pay off and discharge the liens* and trusts upon these bonds in the hands of Papy. By voting this stock, the equitable ownership of which was in Calvin Littlefield, under assignments to him, 590 bonds of that company were issued and applied to pay off and discharge the liens asserted against these bonds by the W. N. C. R. R. Co., by Clingman, Bayne, Rogers, Coddington, and L'Engle, Reed's assignor. See the subject fully discussed with reference to Rec., original brief, pp. 46 to 52. Also, release of Bayne and Rogers' Supplemental

Rec., pp. 38 and 39, where they acknowledge satisfaction of their claims against these 103 bonds.

Thus, Calvin Littlefield, by applying his own property, to wit: his stock—four-fifths of all the stock of the Florida Central Co.—*has paid a second time for a clear* title to the 103 bonds, at the par value of new Florida Central bonds of $325,000. (Rec., p. 522.)

He paid off through his assignor (and he could not use the stock in the name of himself, because legal title had not been transferred), every person who had *ever set up any pretense of a claim* against these $103,000 of bonds (in order to make his title to them good), except the trustees, but *at the time* he paid off these other claimants, to wit, 1877, it had been adjudicated in the State Court, as stated before, that the trustees, having recovered a decree for the full amount of the purchase money due, were not entitled to have the 103 bonds surrendered; and having settled with all other claimants (as I have shown in the original brief), *after and on the faith of* such adjudication, it would be unjust to disappoint his just hopes of realizing on the bonds, and make a gift of the amount due thereon to the purchasers of the road. Having so paid off all liens under such circumstances, his equity springing *therefrom is superior to all other claims that ever existed on the bonds.*

2d Am. L. Case, 223, 5th Ed.;
Padget vs. *Lawrence*, 10 Paige, 170, 180;
Petrie vs. *Clark*, 11 S. R., 371.

Such is the reply to the charge that our claim is fraudulent.

Consideration for 103 Bonds.

By referring to Rec. pp. 78 to 80, it will be observed that the whole amount of property, stock, city lots, and bonds, Littlefield bought of Houston, amounted to $252,864.

Of which paid for stock	$98,200
For city lots	21,319
For Commissions	50,000

Leaving paid for 103 bonds, $83,345, which Littlefield paid with his own funds. The difference of $169,519, *which went into the railroad* was not quite paid by the draft, by the J., P., & M. R. R. Co., for $163,000 on Hopkins & Co. M. S. Littlefield, is therefore right in contending, as he has repeatedly testified that the 103 bonds could not be the property of that Company until it had paid him for them.

There is a reference on page 10 of Reed's brief, to the mis-statement of the fact that a certain order of the Court was not in the record. This was my fault; the order is in the supplemental record, and my original brief was printed and in the hands of the Clerk of this Court, long before the supplemental record was made up.

H. BISBEE,
For C. Littlefield.

11241 9

FILED.
DEC. 26 1885
JAMES H. McKENNEY.
CLERK.

Supreme Court of United States.

CALVIN LITTLEFIELD, Appellant,
vs.
WILLIAM D. BLOXHAM, Governor, et al.
} October Term, 1885. No. 155.

EDWARD J. REED, Appellant,
vs.
WILLIAM D. BLOXHAM, Governor, et al.
} October Term, 1885. No. 174.

BRIEF OF ARGUMENT *Sur* MOTIONS TO DISMISS APPEALS.

WAYNE MacVEAGH,
For Appellees.

Allen, Lane & Scott, Printers, 229-231 South Fifth Street, Philadelphia.

Supreme Court of the United States.

Calvin Littlefield, Appellant,

vs.

William D. Bloxham, Governor, et al.

October Term, 1885.
No. 155.

Edward J. Reed, Appellant,

vs.

William D. Bloxham, Governor, et al.

October Term, 1885.
No. 174.

BRIEF OF ARGUMENT *SUR* MOTIONS TO DISMISS APPEALS.

The appellant, Calvin Littlefield, by petition filed February 27th, 1882, intervened in the case of Edward C. Anderson, Jr., *et al. vs.* The Jacksonville, Pensacola & Mobile R. R. Company *et al.* (Circuit Court of the United States for Northern District of Florida), claiming certain bonds of the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company, commonly known as "the one hundred and three bonds."

A decree of the said Circuit Court was entered June 23d,

1882, adverse to the claim of Littlefield. The said Calvin Littlefield then appealed from a portion of the above decree. Certain papers in the case, purporting to be a transcript of the record, were filed in this court and docketed as of October 31st, 1882. To these papers there was no clerk's seal or signature attached showing them to be a transcript of the record of the court below. On October 13th, 1885, a motion for leave to withdraw the record to attach clerk's certificate was filed in this court and submitted. The motion was granted and on November 16th, 1885, the clerk's certificate was filed.

It appears that the papers purporting to be the record on file in the clerk's office of this court, were not actually withdrawn from the office for the attaching of the certificate of the clerk of the lower court; but the certificate of the clerk of the lower court was filed as the next step after the granting of the motion to withdraw. The motion for leave to withdraw the record for the purpose of attaching the clerk's certificate was itself granted upon an *ex parte* application to this court, the appellees being without an opportunity of asserting its irregularity or of resisting it in any way,.

Substantially the same facts, *mutatis mutandis*, occurred in the case of *Reed, appellant*, vs. *Bloxham* et al.

Upon these facts it is submitted that the above appeals should be dismissed.

The statute law upon which the practice of this court rests in matters relating to the formalities necessary in taking of writs of error and appeals, is found in sections 997 and 1012 of the Revised Statutes, being respectively portions of the Judiciary Act of 1789 and its supplement, the act of 3d March, 1803, as follows:—

SECTION 997. There shall be annexed to and returned with any writ of error for the removal of a cause at the day and place therein mentioned, an authenticated transcript of the record, an assignment of errors, and a prayer for reversal, with a citation to the adverse party.

SEC. 1012. Appeals from the Circuit Courts, and District Courts acting as Circuit Courts, and from District Courts in

prize cases, shall be subject to the same rules, regulations, and restrictions as are or may be prescribed in law in cases of writs of error.

In a series of cases extending from Hamilton *vs.* Moore, 3 Dall., 371, to Killian *vs.* Clark, 111 U. S., 784, these sections have been construed to require that the writ of error or the allowance of appeal, together with a copy of the record and the citation, when a citation is required, must be returned to the next term of this court after the writ is sued out or the appeal allowed; otherwise the writ of error or the appeal, as the case may be, will become void, and the party desiring to invoke the appellate jurisdiction will be obliged to resort to a new writ or a new appeal.

See Castro *vs.* United States, 3 Wall., 46, and cases there.

Grigsby *vs.* Purcell, 99 U. S. R, 505, and cases there.

The ground upon which the court has placed its decisions dismissing appeals where transcripts have not been filed at the first term after the granting of the appeals, is that the details of form connected with the jurisdiction of the Supreme Court in cases of error and appeal being statutory, the court is not at liberty to modify them in essential particulars. In United States *vs.* Curry, 6 How., 106, where the appellant, after his appeal, had not issued his citation to the opposite party within the prescribed period according to the requirements of the statute, it was urged by counsel against the motion to dismiss the appeal that the objection to the jurisdiction of the court on that ground was a mere technicality and rather a matter of form than of substance. Chief Justice Taney, dismissing the appeal, answered as follows: "This court does not feel itself authorized to treat the directions of an act of Congress as it might treat a technical difficulty growing out of ancient rules of the common law. The power to hear and determine a case like this is conferred upon the court by acts of Congress, and the same authority which gives the jurisdiction has pointed out the manner in which the case shall be brought before us; and we have no power to dispense with any of these provisions, nor to change or modify them. And if the mode prescribed for removing cases by writ of error or appeal be

too strict and technical, and likely to produce inconvenience or injustice, it is for Congress to provide a remedy by altering the existing laws, not for the court. And as this appeal has not been prosecuted in the manner directed, within the time limited by the acts of Congress, it must be dismissed for want of jurisdiction."

See Edmonson *vs.* Bloomshire, 7 Wall., 310–311.

This court has uniformly adhered to the principle asserted in these cases, and wherever in any case an appeal has not been duly prosecuted by filing a certified copy of the record at the term of this court succeeding the decree in the lower court, and it was possible for the appellant to have done so, the appeal has been dismissed.

The present claim is, not that a transcript of the record was not filed within the required period, but that *the* transcript which the statute requires was not so filed. The language of the statute is: "There shall be annexed * * * an *authenticated* transcript of the record" within the period prescribed. If this court has held, and if it is the law of this court, that an authenticated transcript of the record filed after the first term will not support an appeal, it is equally the law that a transcript of record filed at the time of entry of appeal, but which does not become an "authenticated transcript" until after the time fixed by law for filing such transcript, cannot support the appeal. If the word "authenticated" is to be allowed any meaning whatever in the statute, it must be considered an essential word therein. A bundle of papers, made up by the clerk of the Circuit Court and purporting to be a transcript of the record, but without his authentication to the fact, is entitled to no more consideration than an unofficial copy of the record prepared by either party to the controversy. If the present appellants had themselves made up a transcript of the papers in the case in the clerk's office of the Circuit Court for the Northern District of Florida, and filed it without an authentication when the transcript in this case was filed, it would not be pretended that such a transcript would have supported these appeals. The circumstance that, as a matter of fact, the papers purporting to be a transcript of record were

made up by the clerk cannot give them an official force which only comes with an authentication.

If such were the case, the act of authentication would be an idle form, not an essential ministerial act.

All inquiries as to the regularity of an appeal are to be answered as of the period within which it is to be perfected. If it is not perfected or "duly prosecuted" within that period, it will have spent its force, and no subsequent action of the parties can give vitality to that particular appeal. If the appeal is not completely prosecuted during the first term succeeding the decree of the lower court, there is no appeal in existence, and there is nothing upon which a subsequent action of the court allowing a certification can act. It would seem, therefore, that unless the filing of an unauthenticated transcript of record within the prescribed period will be a sufficient compliance with the law, no action authenticating the transcript after the period can be of any avail. Of course, in view of the words of the statute, it is not claimed by the appellants that an unauthenticated record has any such value, and the action of one of them in seeking to obtain an authentication *nunc pro tunc* would itself negative any such claim.

The case of Mussina *vs.* Cavazos, 6 Wall., 355, is instructive for its discussion of the principles upon which section 997 of the Revised Statutes is to be interpreted as related to such cases as the present. Mr. Justice Miller there shows that certain provisions of the section have not been literally insisted on by the court, because considered unessential, while others are to be more carefully followed. Thus it was said that to support the appeal it was not necessary that the assignment of errors or the prayer for reversal be returned at the same time as the record, and that if the appeal was taken in open court in the presence of the appellee a citation was not necessary. It was also said that the practice of the court was not to require a return of the record literally on the first day of the term, provided it was returned during the term. The case itself decided that if during the life of the writ a good and sufficient return was made to it, it was not absolutely necessary that the writ be sent with the record to this court.

But the court maintained that the *return of an authenticated transcript within the period was* necessary to sustain the appeal. In distinguishing the facts of that case from previous cases the court said: "Nor does the case come within the principle which we have already stated as governing the cases of Villabolos *vs.* United States and Castro *vs.* United States. In these cases the appeals were dismissed because no returns of the transcript to this court were made, until by analogy to the writ of error, the time for making such returns had passed; and the writs, if writs had been issued, would have been *functus officio.* In the case before us, on the contrary, it fully appears that *during the life of the writ a good and sufficient return to it was made, by sending to this court an authenticated transcript of the record.*" It is submitted that the plain inference to be drawn from this language is that a return of the record unauthenticated within the period would not have been a good and sufficient return.

In Edmonson *vs.* Bloomshire, 7 Wall., 306, the intelligible ground of the decision that if there is no sufficient return to a writ of error or appeal within the next term, the writ or appeal will be dismissed, was said to be that the writ of error and the appeal are the foundation of the court's jurisdiction; without which the court has no right to revise the action of the inferior court, and that unless the writ or the appeal was duly prosecuted by a proper return within the period, there was no writ or appeal in existence upon which any subsequent action of the court could be based.

Of course, a return of the transcript of record is no return unless it is a proper return, and unless it is an authenticated return it is not a proper return. In United States *vs.* Gomez, 1 Wall., 690, where on a motion to dismiss, the objection was made that a return was not duly certified, the court considered the point carefully, and refused the motion, because, *inter alia*, "the certificate was made by an officer authorized by law to make it," and because it was not perceived to be defective.

An authentication of the record *nunc pro tunc* after the expiration of the time for the return of the record is no more possible than is a filing of the record *nunc pro tunc* after the

period. The attempt to do either the one or the other is met by the fatally serious consideration already referred to, that the writ or the appeal, if imperfectly prosecuted at the expiration of the first term after the decree of the inferior court, has thereafter no life for any purpose, even for that of an amendment.

There is but one exception to the rule that the writ of error or appeal will be dismissed unless duly prosecuted by a proper return within the period, viz.: When the plaintiff in error or appellant has been guilty of no laches or want of diligence, and the failure to return a properly certified record in time is entirely due to circumstances over which he has no control.

Cases in illustration of this exception are, United States *vs.* Booth, 21 How., 506, and United States *vs.* Gomez, 3 Wall., 752.

In the first of these the State court had ordered the clerk to disregard the writ of error and make no return, and the plaintiff, although exercising great diligence in appplying to this court for an order upon the clerk, was unable to procure a return within the period. The next case was where the clerk of the lower court refused repeated requests of the appellant for the transcript of record, and the appellants were likewise unable to obtain it in time.

It is obvious that the facts of our case cannot well be brought within the exception. Although the absence of the the clerk's certificate to the record may have been originally due to the neglect or oversight of the clerk of the inferior court, the failure to discover the omission and to have it supplied during the first term of this court after the entry of the decree was clearly laches or negligence on the part of the appellants. It is made the duty of the appellant to procure and have sent to this court an authenticated transcript of the record. If such a record does not come in time he can only save a dismissal by showing that he could not have obtained it.

See Grigsby *vs.* Purcell, 99 U. S., 507.

The docket of this court shows that the case was entered thereon and the papers purporting to be a transcript filed Oc-

tober 31st, 1882, and November 21st, 1882, respectively. It the papers were forwarded by the appellants or their counsel, it was clearly laches in not discovering the omission of the clerk's certificate at the time. But in any event, and whether forwarded by the appellants or by the clerk of the lower court, according to the practice of this court (Mussina *vs.* Cavazos, *supra*) the appellants had the entire term of October, 1882, in which to procure the authentication of the record—to compel such authentication, if necessary, by an order of this court. It nowhere appears that any effort was made by the respective appellants or by their counsel to have the authentication made until 1885. When it is considered that such effort would have fully availed if made at any time up to October 1st, 1883, the great laches of the appellants is apparent.

Said Mr. Chief Justice Waite in Grigsby *vs.* Purcell: To prevent a dismissal of the appeal or the writ of error, "in all such cases it must appear that the appellant or the plaintiff in error, has not himself been guilty of laches or want of diligence." If this language of the Chief Justice is to be still considered as declaring the law of this court—the case in which it was uttered has been affirmed in State *vs.* Demarest, 110 U. S., 400, and Killian *vs.* Clark, 111 U. S., 784—the present appeals, upon the facts as they appear, must be dismissed.

It is of course plain that the appellants may not in the present case allege accident or mistake, and avail themselves of it to resist the dismissal of the appeals. Accident or mistake will not be sufficient to prevent dismissal unless the accident or mistake was in a matter unessential to the validity of the appeal. In Seymour *vs.* Freer, 5 Wall., 822, it was said that where, through mistake or accident, no bond, or a defective bond, has been filed, this court will not dismiss the appeal—if it is in all other respects quite regular. But this ruling was expressly on the ground that the filing of the bond was not essential. Such was also the ruling of Edmonson *vs.* Bloomshire, 7 Wall., 311.

In a matter so essential to the appeal as the filing of an authenticated transcript within the prescribed period, no allow-

ance for accident or mistake can well be made without rendering nugatory the law as declared that a proper transcript of record must be filed at the first term, if it is possible.

If it be urged that the transcript of record is properly amendable upon application to this court by the authority of, or upon analogy to, the principle of section 1005 of the Revised Statutes, according to the ruling in Texas & Pacific Railway Co. *vs.* Kirk, 111 U. S., 486, it need only be answered that that section applies only to *writs* of error, *not* to *transcripts of record* on writs of error, and much less to transcripts of record on appeal, and comprehends only cases where the defect can be remedied by reference to the accompanying record, and to errors in form.

The present defect, at the time of the *ex parte* application of one of the appellants to this court in October, 1885, was certainly not capable of being remedied by reference to the accompanying record, and that it was not a matter of mere form is shown by the care this court has always taken to provide not only for the *fact* of an authentication of record but for a *proper* authentication.

See Garneau *vs.* Dozier, 100 U. S. R., 7;
Missouri, Kansas & Texas R'y *vs.* Dinsmore, 108 U. S. R., 30.

It is to be insisted, also, that the present appellants are entitled to derive no benefit from the recent action of this court in allowing the motion to withdraw the transcript to attach the clerk's certificate, the allowance having been upon an application *ex parte* without an opportunity given to the appellees to be heard.

But if such allowance by this court should be urged it need only be answered that the order was itself not complied with —the record never having been withdrawn from the court. The certificate of the clerk was filed in November, 1885, without any previous effort to obtain the record from this court, to which it could be attached in accordance with the order.

On the whole, therefore, it is respectfully submitted to this Honorable Court that if the well-settled law and practice of

the court is to be sustained in the present case, the appeals must be dismissed.

The language of Mr. Chief Justice Waite in Grigsby *vs.* Purcell, 99 U. S., 507, is to be applied with no abatement of its force to the present case: "These appellants bring themselves within none of the exceptions which have ever been recognized. There has been no fraud or circumvention, and the whole difficulty arises from their own negligence alone. * * * * * * * * * * * *

To entertain the cause under such circumstances would be to encourage an addition to the already burdensome delay necessarily attendant upon litigation in this court on account of the crowded state of the docket. Instead of this, we should, as we do, insist on promptness and activity by all who come here to obtain a re-examination of judgments and decrees against them." There would be no fatal hardship to the appellants in the court dismissing their appeals, since, under the law, they are each entitled to another appeal, in the prompt and the proper prosecution of which they may profit by the results of their past negligence.

WAYNE MacVEAGH,
For Appellees.

117-419

Office Supreme Court, U. S.
FILED
MAR 1 1886
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

October Term, 1885. No. 155.

CALVIN LITTLEFIELD, Appellant,

vs.

WILLIAM D. BLOXHAM, Governor, *et al.*

October Term, 1885. No. 174.

EDWARD J. REED, Appellant,

vs.

WILLIAM D. BLOXHAM, Governor, *et al.*

Brief of Argument for Appellees.

WAYNE MacVEAGH,
For Appellees

DANDO PRINTING & PUBLISHING COMPANY,
34 SOUTH THIRD STREET,
PHILADELPHIA.

Supreme Court of the United States.

CALVIN LITTLEFIELD *vs.* WILLIAM D. BLOXHAM, *Governor of Florida*, et al., *Trustees of the Internal Improvement Fund.*	Oct. Term, 1885. No. 155.

EDWARD J. REED *vs.* SAME.	No. 174.

BRIEF OF ARGUMENT FOR APPELLEES.

STATEMENT OF THE CASE.

In view of the complex state of the record, it will be desirable, for the sake of clearness, to preface the argument by a short history of these cases.

The controversy is over bonds of the Pensacola & Georgia Railroad Company and the Tallahassee Railroad Company, aggregating about $103,000, and commonly called the "103 bonds."

The history of the issue of these bonds by the railroad companies and of their endorsement by the appellees, the trustees of the Internal Improvement Fund, with the sales of the railroads by the appellees' board, is succintly stated by Mr.

Justice BRADLEY in his opinion in the case of Schutte *et al.*, *vs.* The J. P. & M. R. R. Co. *et al.*, page 450 of the Record. See also State *vs.* E. C. Anderson *et al.*, 1 Otto, page 667.

These roads were purchased by one Dibble and associates [Record, page 451], and part payment made therefor in bonds of these classes, contributed by one George W. Swepson. A spurious draft was passed on the trustees for the balance of the purchase-money and a deed taken, accompanied by the possession of the property. The draft was never paid and was not intended to be paid when given. [Page 452.] By this fraud a lien immediately arose in favor of the trustees, the appellees, and has ever since attached to the property [452] as a vendor's lien, as has been adjudicated in the Schutte Case [475] and in other cases referred to therein. The continued possession of the property by the purchasers and their associates, without paying the purchase-money, has been declared to be a *quasi fraud* against the vendor, and the purchasers of the road have been held to be trustees for him. [474.]

The State of North Carolina, in 1867 or about then, by an issue of its bonds, had granted aid to a company known as the Western Division of the Western North Carolina Railroad Company for the construction of its road. At times, Geo. W. Swepson was president of this road and at other times M. S. Littlefield. The proceeds arising from the sale of these North Carolina bonds were diverted from the building of its road and placed with Souter & Co., bankers, in New York, and this money checked against by Edward Houston, in the purchase of the bonds of the Pensacola & Georgia Railroad and the Tallahassee Railroad [407, 414 to 418], which were used in making the partial payment made for Dibble and his associates to the trustees of the Internal Improvement Fund. Dibble and his associates, having secured deeds to the two Florida roads, transferred these deeds and made their separate conveyance of the properties to Geo. W. Swepson, in contemplation of further conveyances by him to a corporation to be composed of Dibble and

his associates, who expected to be aided by an act of the Florida Legislature. Swepson's advances were to be secured by a sale of certain Florida State bonds which should be obtained. [374.]

The Florida Legislature, by an act approved June 24, 1869, organized Dibble and associates into a corporation to own their purchases by the name of the Tallahassee Railroad Company. [McClellan's Dig. Laws of Florida, 1101.] At the same session, the Jacksonville, Pensacola & Mobile Railroad Company was incorporated by an act approved the same day, with George W. Swepson, M. S. Littlefield, and others as incorporators, to whom these roads were conveyed, and vested under the purchases by Dibble and his associates, but only a partial payment for which had been made by the aid of Swepson & Littlefield, who furnished bonds, and by the fraudulent use of a draft of Dibble accepted by Swepson, who had been constituted financial agent [Record, 373] of the respondent's board for the purchase of the outstanding bonds of the two roads first referred to.

On May 13, 1870 [Record, 228 and 229], Edward Houston sold to M. S. Littlefield the bonds in this controversy, together with sundry shares of stock in the roads which had been formed out of the roads first mentioned, and the Florida Central Railroad. In this transaction Swepson, Souter & Company, and Littlefield and his fiscal agents in New York, S. W. Hopkins & Company, have so mixed the consideration in their agreement as to make it uncertain whether the bonds were purchased by Houston for Swepson with money of the North Carolina Railroad Company, paid out by Souter & Company, or whether Houston sold on his own account to Littlefield, but certain it is that by the agreement Houston was to receive $163,090.20, and on its payment that Littlefield should become the owner of said bonds, and that this was to have been a full, complete, and final settlement of all matters between Swepson and Littlefield and Houston.

By previous contract between Swepson and Littlefield [Record, 414 to 418], the former had sold to the latter all his

interest in the Florida railroads subject to the obligation to pay the unpaid purchase-money to the appellees, and subject to the payment to the Western Division of the Western North Carolina Railroad Company [Record, 53 to 57] of the money diverted from it in the purchase of the Florida roads. In the spring of 1870, Littlefield represented to the Governor of Florida that he was under contract obligation to purchase for and surrender to the board of trustees, *appellees*, for cancellation, all the outstanding bonds of the Pensacola & Georgia and Tallahassee Railroads, and that he had received all of them but $227,000, which latter sum did not include these $103,000 bonds, and he then gave a draft on Hopkins and Company for that sum, which draft was never paid. [Record, 53]. Of the bonds contracted for, he actually purchased $103,000 from Edward Houston [Record, 107, 112, 113], but bought no more because Hopkins failed to furnish the money. In consideration of his agreement to carry out the obligation of the original purchases to take up and surrender to appellees the outstanding Pensacola & Georgia and Tallahassee Railroad Companies' bonds, certain bonds known as Florida State bonds were delivered to Littlefield. [Record, 52 and 53.]

A subsequent agreement between Houston and Littlefield, concerning the retention by Houston of these $103,000 bonds and other securities till a future day, was made by Houston and Littlefield on the thirtieth day of May, 1870. [Supplemental Record, page 35.]

Another agreement, still further defining the powers of Houston over these 103 bonds, was made between the same parties on the seventh day of June, A. D. 1870. [Supplemental Record, page 36.]

On the 12th of April, 1871, these bonds with certain stock were deposited with M. D. Papy, as trustee, in trust for the performance of certain conditions for the benefit of Houston, Littlefield, and S. W. Hopkins. [Record, 74 and 75, 70 to 76.] This contract was signed by Houston and Hopkins [Record, pages 75 and 76; pages 106, 113, 114], and subsequently

ratified by Littlefield. The representatives of the North Carolina Railroad's interests [pages 70 to 76] and other creditors of Littlefield having brought suits against Littlefield, garnisheed Houston in these suits in the city of New York and in New Jersey and Pennsylvania. The trust was created to secure Houston in the payment of the money due him and for his protection and indemnity against these suits.

Papy, while holding these bonds and other securities at Savannah, Ga., was arrested under a write of *ne exeat* at the suit of Edward Houston. Therein such proceedings were had, that the said Papy, declining to re-plevy the same, these bonds, etc., were placed by the court in the custody of T. Mayhew Cunningham as receiver. [Record, page 147.] Upon an order of the said Superior Court at Savannah, the said T. Mayhew Cunningham brought the said bonds [Record, page 266] into the jurisdiction of the United States Circuit Court for the Northern District of Florida, and filed them therein with A. Doggett, master in the cause of Edward C. Anderson and others *vs.* The Jacksonville, Pensacola & Mobile Railroad Company and others, in which cause the appellants Calvin Littlefield and Edward J. Reed and divers others, and Reed, as assignee of others claiming these bonds, intervened.

The claims of the different contestants arise as follows:

1. The claim of the Trustees of The Internal Improvement Fund, appellees, is as follows:

The Pensacola & Georgia Railroad and the Tallahassee Railroad had been seized and sold, and its possession and the title to the property given to parties without the entire payment of the purchase-money, as before stated, all of which money was required to pay bonds of the classes in this controversy, and which were a first lien on the properties. Littlefield, by his purchase of the railroads, had become charged with the payment of the unpaid purchase-money, or the discharge of these first liens, by paying off and surrendering to the appellees for cancellation all the outstanding bonds of the classes. This, Milton S. Littlefield contracted to do [the

learned counsel for Calvin Littlefield, appellant, swears to this; see Record, p. 265], not only in consideration of the premises [pages, 52 and 53 of Record], but as an inducement to the state officials to issue to his company certain other bonds, known as Florida State bonds, without which the issue would not have been made [pages, 57–63–64], and for this purpose contracted for and bought these identical "103 bonds," and declares that if they had been turned over to him [pages 77–83–105 to 107–108, 109, 110, 111] when Houston was paid therefor, and when the Papy trust was created, he would have surrendered them to the board for cancellation. He also declares that his advances were to the company, and not upon these bonds as a private investment. So, when Littlefield's right to these bonds became complete by the purchase, and particularly when the balance due Houston for which he held these bonds and stocks, and which balance was far in excess of the aggregate value of the bonds, was paid by S. W. Hopkins & Co. with moneys which belonged to the railroad company, arising from the sale of its state bonds, the trustees became legally entitled to the surrender of the same, in part payment of the unpaid purchase-money, and to have them cancelled on that day, 12th April, 1871. This right attached not only by reason of the lien which the trustees had for the unpaid purchase money, and the obligation which resulted therefrom upon the railroad company, successors to the purchasers, and upon Littlefield as its President and principal owner [page 53], but also by virtue of the special agreement made by Littlefield himself, by the force of which he was further enabled to get large numbers of state bonds on said property.

2. The appellant, Edward J. Reed, claims the bonds in controversy on the following grounds:

John H. Miller recovered a judgment in the Circuit Court of Florida for Duval County, on the 18th day of April, A. D. 1872, against Milton S. Littlefield for $50,688.88. [Record, 148 to 151.] On the 15th of November, 1872 [page 327],

said Miller filed a creditor's bill in the Circuit Court of the United States for the Northern District of Florida, against the said Littlefield, Edward Houston, M. D. Papy, Hopkins & Company, and others. Therein he sought to subject the stocks and bonds mentioned in this case and other assets of the said Littlefield to the payment of his execution creditors according to their priorities. Such proceedings were had therein, that on the 2d day of December, A. D. 1873 [pages 175 and 176], a decree was rendered, directing a marshaling of the assets of the said Littlefield by a master and ordering a sale thereof, and the application of the proceeds to the payment of the costs of the proceedings and the execution, according to their priorities. It was expressly directed that the said bonds (*these*), etc., of the said Littlefield, or so much thereof as should be necessary to carry the decree into effect, be sold by a master afterwards to be appointed [page 175]. By said decree, one Summers was made master to execute the same, and upon his death one F. P. Fleming was substituted as the master on the 6th of January, 1875. On the 21st day of June, 1875 [page 162], the master, reporting to the court the order of priorities among the creditors, awarded the first claim to E. M. L'Engle, survivor, etc., *vs.* M. S. Littlefield, and the second to Miller *vs.* M. S. Littlefield [see pages 162–164]. This report was afterwards confirmed.

On the 20th day of August, 1875 [page 178], the master made sale of said bonds, etc., as will appear by his report of August 5, 1875 [pages 178 to 182, Record]. The bonds were purchased by Robt. J. Washington, and, as will appear by said report, the amounts of his several bids were applied and credited according to the terms of the decree, after paying the costs of the proceeding upon the execution in favor of E. M. L'Engle. The purchaser was not, however, placed in possession of the bonds, they having been sold subject to the trust mentioned in the decree in favor of Edward Houston, and the custody thereof being in the trustee. This sale was confirmed [page 182; see also 175]. The purchase by Washington was as trustee under

an agreement between him and the said E. M. L'Engle, by which Washington agreed to purchase said bonds and to hold the same on such trusts as the said L'Engle should under his hand and seal declare [page 487].

On the 23d of December, A. D. 1881, the said L'Engle assigned all of his interest in the said bonds to the appellant, Edward J. Reed, and directed under his hand and seal the said Robert J. Washington to hold and possess or assign and transfer to the said Reed the said bonds for or to the said Reed, in accordance with said agreement of July 19, 1875, as appears by the indenture signed by said L'Engle and the said Reed [pages 487 and 489]. Reed by this assignment became invested with all claims which had then been asserted to these bonds, except that of the appellees, the Trustees of the Internal Improvement Fund of Florida. The claims of the Western Division of the Western North Carolina Railroad Company thereto had been released by deeds from Rollins & McLean, receivers, to E. M. L'Engle, December 5, 1881 [page 520], and of L'Engle to E. J. Reed, December 23, 1881 [pages 577–579]. The claims of the following parties were also released: L. P. Bayne & Company, Henry J. Rogers, trustee, Thomas L. Clingman, and the Jacksonville, Pensacola & Mobile Railroad. [See Supplemental Record, pages 38–41.]

3. The claim of appellant Calvin Littlefield.

In this condition of affairs, Calvin Littlefield on the twenty-seventh day of February, A. D. 1882, [page 478], filed his petition in the main cause of *Anderson, etc.*, aforesaid, and claimed these bonds by virtue of two instruments bearing dates July 13, 1871 [page 485], and January 11, 1872 [page 486], purporting to have been made by Milton S. Littlefield. In one he undertook to make a chattel mortgage of these bonds not then in his possession, but in the hands of M. D. Papy, to one Calvin Littlefield, the petitioner. The other instrument is an attempted bill of sale of the bonds and other property to Calvin Littlefield, on account of the failure of Milton S.

Littlefield to pay the $50,000 indebtedness mentioned in both instruments, and which the former was made to secure. Neither of these instruments was ever acknowledged or proven for record, nor were they ever recorded in either of the states where the bonds had been held, to wit, the States of Georgia or Florida, or elsewhere, and no notice, actual or constructive, of their existence had ever been given, either to Mariana D. Papy, or to T. Mayhew Cunningham, or to Aristides Doggett, or to Edward Houston, who, at different times and together for all the time, since the original contract with Littlefield and Houston for their purchase, had held the possession of these bonds. Nor had any notice of such papers been given to any person who claimed any interest in or had been a party to the litigation concerning their ownership. Nor had their existence been either claimed or insinuated anywhere in all the voluminous proceedings which had covered the records for eleven years and more. And this, too, notwithstanding the petitioner was continuously a stockholder in and at times a director of the Jacksonville, Pensacola & Mobile Railroad Company, upon whose lines of road these bonds were a first lien, and in the suits over the said bonds the company itself was a party. And this disclosure was not made, although Milton S. Littlefield [page 77, middle of page], was at times and all the time, contending and averring that these bonds were his [Milton S. Littlefield's] unless his title to them was lost by the court proceedings in the creditors' bill, and by the sale of the master and the purchase by Washington.

ARGUMENT.

From the mass of facts constituting and complicating the history of these cases, it will be found that the litigation reduces itself to a struggle for right of property in the "103 bonds" between the Trustees of the Internal Improvement Fund of Florida, and the two claimants to the title of Milton

S. Littlefield in them. The present argument need only be directed to a presentation of the case of the appellees, without inquiring into the comparative merits of the cases made out by the appellants. If it is determined in affirmance of the decree of the court below that the trustees of the Internal Improvement Fund are entitled to have these bonds surrendered to them for cancellation, it will be unnecessary for this court to consider further claims. On the other hand, in the improbable event of the court refusing to recognize the apparently overwhelming equities of the appellees' claim, it can be of no interest to the appellees in which of the appellants should be found to be the right to the bonds.

As against both the appellants, therefore, is asserted the positive claim of these appellees.

The notorious facts upon which all the parties to this controversy are agreed are:

1. That the trustees of the Internal Improvement Fund, of Florida, having by due authority seized and sold to certain purchasers the Pensacola & Georgia Railroad and the Tallahassee Railroad, for the consideration of the surrender to them by the purchasers for cancellation certain first mortgage bonds of the two roads [among which were the "103 bonds," now in litigation], or the payment of a sum of money equal to the value of the bonds [Record, pp. 451–2], have never received from the purchasers or from others on their account all of the said bonds, or been able in any way to obtain the payment of the entire purchase-money.

A first lien upon the property for this balance of purchase money has been declared by the courts in favor of the trustees, as subsisting successively against all owners of the railroads subsequent to the original purchase.

2. That in the spring of 1870, M. S. Littlefield, who was then president and principal owner of the Jacksonville, Pensacola & Mobile Railroad Company, a corporation which

succeeded, through successive transfers, to the rights of the original purchasers of the two railroad companies above mentioned [see Record, pages 265, 52, 53, 57, 63, 64], contracted with the Governor of Florida, *ex-officio* chairman of the board of Trustees of the Internal Improvement Fund, to purchase all of the outstanding bonds, excepting a certain number not obtainable, and deliver them to the trustees for cancellation. The consideration for this undertaking of Littlefield was double: first, because there was already an obligation to surrender the bonds for cancellation under the original terms of purchase; and secondly, because of the delivery to Littlefield by the officials of the state at the time of $4,000,000 worth of Florida state bonds.

3. That in pursuance of this agreement, the "one hundred and three bonds" in controversy [Record, pages 53, 265] were purchased by Littlefield of one Edward Houston and paid for on behalf of Littlefield by S. W. Hopkins & Co., the fiscal agents of the Jacksonville, Pensacola & Mobile Railroad Company, [page 109], with moneys arising from the sale of the state bonds which had been delivered by the trustees to the railroad company in advance. [Pages 478 to 483; see page 111.]

4. That by reason of the pecuniary obligations of Littlefield, and the assertion by litigants of adverse claims to the bonds, Littlefield never got possession of them, but that if he had been able to obtain them when they were paid for, April 12, 1871 [page 113], he would have surrendered them to the trustees for cancellation.

5. That as early as 1875, the trustees, by an intervening petition in the present case of Anderson *vs.* The Jacksonville, Pensacola & Mobile Railroad Company, asserted their right to have these identical bonds surrendered to them for cancellation. In this they followed the course of their predecessors in the trust who had endeavored before this by an action in the

Circuit Court of Florida for Duval County, to effect the same end. [Opinion of Mr. Justice WESTCOTT, page 114.]

6. That in 1877, the trustees of the Internal Improvement Fund with others, were made defendants in an action by J. Fred. Schutte *et al.*, holders of state bonds given the Jacksonville, Pensacola & Mobile Railroad Company, in exchange for bonds of its own, by which they were compelled to assert, as against the plaintiffs, their own equity to a prior lien upon the property of the company for the balance of unpaid purchase-money. [450.] A decree was made in their favor by the Circuit Court for the Northern District of Florida, May 31, 1879.

7. That June 23, 1882, the same court entered a decree in favor of the present appellees, as against the present appellants, directing the surrender of the "103 bonds" to them for cancellation [page 548]; as a payment on the sum declared to be due them by the decree of May 31, 1879, in the Schutte Case. From the latter decree the present appeal is taken.

Upon these facts, the appellees come into this court armed with equities of conceded force, and with presumptions in their favor which cannot be eluded.

The right of the trustees to these bonds as against every claimant under M. S. Littlefield rests in brief on these grounds:

(*a*) Because by the original contract of purchase from their predecessors, the road was to be paid for with these classes of bonds, and a balance of unpaid purchase-money being still due, parties in privity with the Jacksonville, Pensacola & Mobile Railroad Company, or with M. S. Littlefield, who received the benefit of the purchase, ought not to claim a right of property in them.

(*b*) Because M. S. Littlefield agreed to purchase and deliver these bonds for cancellation and actually purchased them for such purpose.

(*c*) Because State bonds were delivered to Littlefield and his company (their proceeds being used by them) upon the faith of the surrender of these bonds by Littlefield.

(*d*) Because while the balance of unpaid purchase-money remains, its amount will be a lien on the railroad. This is a continuing fraud upon the holders of the State bonds, who purchased them from Littlefield and his company as a first lien upon the road, and who subsequently purchased the road at a sale under order of court subject to this lien. To permit the "103 bonds" to remain outstanding, or to put them in the hands of Littlefield's privies, would be to continue the fraud upon these State bondholders for the benefit of Littlefield himself, its master spirit.

To state the above reasons for the appellees' claim, is to prove its justice. The only possible ground upon which the appellants can or do, with any plausibility of argument, resist it is the technical ground of estoppel. It was claimed in the court below, and the claim is pressed with some vigor in the brief of counsel for Calvin Littlefield, appellant, that the appellees, by accepting a decree in their favor in the Schutte Case in 1879, whereby they were declared to have a first lien upon the property of the Jacksonville, Pensacola & Mobile Railroad Company, have estopped themselves from now demanding that these bonds be surrendered to them for cancellation. The argument is, that there was but one sum of purchase-money due the trustees, and they, having elected to receive payment of it from the Jacksonville, Pensacola & Mobile Railroad Company in the shape of a first lien upon its property, may not now ask payment again in the form of the surrender of bonds. The fallacy of this reasoning is, of course, that it mistakes the object of the claim of the Trustees. The Trustees seek to obtain the bonds from the very parties and their privies who were bound to surrender them and who obligated themselves to do so. They demand them in pay-

ment of, not in addition to, the purchase-money which the Jacksonville, Pensacola & Mobile Railroad Company and M. S. Littlefield undertook in this way to furnish. They demand them in satisfaction of the lien which the court has declared as subsisting in their favor, the payment of which long since should have given to the holders of the State bonds a priority of lien which, as against M. S. Littlefield and his privies and the Jacksonville, Pensacola & Mobile Railroad Company, they were entitled to have.

If the appellees are to be estopped by accepting the decree in the Schutte Case, whereby a lien in their favor was declared for the balance of unpaid purchase-money, it must be by an estoppel of record.

It can hardly be claimed that the conduct of the appellees in accepting the decree worked an estoppel in *pais*, of which the present appellants may take advantage, for the essential element of such an estoppel is wanting, viz., that the party claiming the benefit of it has, while acting in good faith, been induced, by the voluntary intelligent action of the party against whom it is alleged, to change his position.

Bigelow on Estoppel, page 345.

There can be no pretence that the appellants have in any way changed their position, entered into any obligation, or suffered injury by reason of the action of the Trustees in the Schutte Case. The titles of the appellants to these bonds are asserted as vehemently and in the same way as they could have been before the Schutte decree was made, and their position is strictly the same now as ever, excepting as they seek to strengthen them by invoking the aid of technical rules of law. When they allege an estoppel of record, they are met by the consideration that the record of which they seek to take advantage, namely, the record of the proceedings in the Schutte Case, wherein the trustees claimed and were declared to have a first lien upon the property of the Jacksonville, Pensacola & Mobile Railroad Company, is a record of transactions, if not between *other parties* at least as to *other issues* than those belonging in the present controversy.

The principle is, of course, elementary and as old as the Roman law, that for an estoppel of record, or *res judicata*, to be set up it is necessary that there should have been in the former action the same thing as the subject-matter of the litigation, the same quantity, the same right, the same ground of action, the same persons suing in the same character.

Bigelow on Estoppel, page 6.

This court has laid down the law of estoppels of this kind in the following language: "A judgment or decree set up as a bar by plea, or relied on as evidence by way of estoppel, to be conclusive, must have been made, 1. By a court of competent jurisdiction upon the same subject-matter; 2. Between the same parties; 3. For the same purpose."

Aspden *vs.* Nixon, 4 How. 467.

The rule of estoppel by judgment or decree is stated in the New York cases thus: "An estoppel by judgment in a former action arises when the same matter was at issue therein, and was either litigated by the parties and determined, or it might have been litigated and a decision had upon it."

Smith *vs.* Smith, 79 N. Y. 634.

In order to make a former action [or decree] a bar, the circumstances must be such that the plaintiff might have recovered in the first action for the same cause of action alleged in the second.

Stowell *vs.* Chamberlain, 60 N. Y. 272.

In order for a judgment in a former action to bind parties and privies by way of estoppel in a subsequent action, it must have directly decided a point which was material in such former action, and is in litigation in the latter.

Aurora City *vs.* West, 7 Wall. 82.

2 Taylor on Evidence, par. 1507.

Dixon *vs.* Merritt, 21 Minn. 196, and cases there.

55 New Hampshire, 580.

Applying to our case these familiar rules of the law of estoppel, it is apparent that there is nothing in the transactions in the Schutte Case of which the appellants may avail themselves in opposing the claim of the appellees.

Although Milton S. Littlefield, under whom the appellants claim, was one of the numerous parties defendant in that case, the questions that arose and were decided, or could have been decided therein, were totally different from those that have arisen in the present controversy. J. Fred. Schutte and other holders of Florida State bonds filed a bill asserting a lien upon railroad property operated by the Jacksonville, Pensacola & Mobile Railroad Company. The present appellees were made defendants therein and were compelled, as against the holders of the state bonds, to present at length their equity to a prior lien on account of the failure to obtain the entire purchase-money of the property. In presenting their claim they were obliged in a cross-bill against the Jacksonville, Pensacola, and Mobile Railroad Company *et al.*, to rehearse the fraudulent transactions under which their claim for a balance of purchase money arose. The court decreed that as against the holders of the state bonds they had a prior lien. *There was no question raised as to title to these* "103 *bonds.*" Such a question would have been not only unnecessary to the determination of the matters under discussion, but its consideration was carefully avoided by counsel and court. The court declared the existence of a prior lien because the holders of outstanding bonds had never been paid. To have adjudicated at the same time the question as to whom the bonds belonged would have been foreign to every necessary purpose of the litigation.

It appeared that these particular "103 bonds," long before the decree in the Schutte Case in 1879, had been placed with the master in the case of Anderson *et al. vs.* The Jacksonville, Pensacola & Mobile Railroad Co., and the right to them was there contested. The court in the Schutte Case undertook in no way to decide this contest. An attempt to have it do so would have been met by the plea or the answer of a *lis pendens* among the complainants, and the intervenors in the Anderson Case. To urge an estoppel against the appellees for accepting the decree in the Schutte Case when the court in that case intended to decide nothing to the same purpose as was decided by the

court below in the present case, is to urge an estoppel unrecognized in the law. It should at least be shown that the positions occupied by the trustees in the two cases are inconsistent. Had they been so, it would have been proper for the court, before making the decree in the Schutte Case, to have raised the point and to have denied to them the relief that was asked and granted. That they are not and cannot be considered inconsistent, is shown by the fact that, while their object has been the same in each case, namely, to obtain value for property delivered, their methods of obtaining it are different—in the one case, by securing a lien, in the other case, by securing the property which liquidates the lien. Until it is decided by a court of competent authority that the simultaneous assertion of several independent rights is improper, the appellees' demand for surrender of the "103 bonds" in payment of the purchase-money lien which has been declared, must be sustained. It must not be forgotten that, although the lien has been established, no payment of it has been made. The debtors practically undertook to pay it in the form of a delivery of bonds. To deprive the creditors of the right to enforce this undertaking merely because the courts have agreed that the general claim which lay at the basis of it is exceptionally meritorious, and is a prior lien, is to take from the creditors one of the very means of obtaining the payment which it was judicially declared they were entitled to.

It is submitted that the most that can be claimed for the appellants as arising in their favor from the Schutte decree is, that it is perhaps possible to argue from its facts that the present claim may have been incidentally considered by or been in the mind of the court. But that such a connection between the cases would work an estoppel is not to be thought. The doctrine of estoppel by record does not apply to points which came only collaterally under consideration, or were only incidentally under cognizance, or could only be inferred by arguing from the decree.

Hopkins *vs.* Lee, 6 Wheaton, 109.

Duchess of Kingston's Case, 2 Sm. Lead. Cas.

The considerations that should weigh in determining whether either of the appellants should be permitted to invoke the aid of the law of estoppel in order to derive a benefit therefrom in obtaining possession of the "103 bonds," is whether the ends of justice would be promoted thereby. The object of the doctrine of estoppel is the prevention of fraud.

1 Greenleaf on Evidence, sec. 204.

It would, however, be a sheer fraud upon the trustees and upon the holders of the State bonds to permit the present claim of estoppel to prevail. The appellants claim under M. S. Littlefield. They are privies in title with him. If M. S. Littlefield, after undertaking to deliver these bonds, and after accepting and getting the benefit of the consideration which passed to him and his company on the faith of their speedy delivery to the trustees, would not be heard to plead any technical rule of law to deny his obligation, neither should they who claim his rights by subsequent purchase be allowed to plead or to urge it. To permit this would be to enthrone a great wrong in the seat of right by a simple transfer of title. Such a thing, it is believed, this high court of justice cannot do.

Objections of Appellant Littlefield to Claim of Appellees.

It will now be convenient to consider in detail the objections to the present claim of the appellees as made in the brief of the learned counsel for the appellant Littlefield.

It is objected:

(1) That the issue was directly made in the Schutte Case as to the ownership of these "103 bonds," and that the present appellees denied having a claim for the surrender and cancellation of these bonds, but asserted a purchase-money lien instead.

REPLY.—This averment of the appellant is not borne out in the portions of the record he cites, nor in any other part of it. A reading of the cited passages, it is submitted, shows that the only question between the parties there was one of priority of lien as between the Dutch bondholders and the trustees. The Dutch bondholders had no possible claim to the "103 bonds." In their bill they averred information that certain persons claimed ownership in outstanding bonds, and that there was a subsisting lien due the trustees for unpaid purchase-money. They neither asserted nor pretended to assert a claim to the bonds themselves, or that the ownership of *these* bonds was in any person or persons in particular. It was sufficient for their purpose to aver, and they so averred, that the trustees were not entitled to a lien or a lien prior to their own, whoever might be entitled to outstanding bonds, or whether or not there were, in reality, bonds outstanding. The trustees [Record, page 354] answered these averments by the assertion that the persons named in complainant's bill, *and other* persons besides them, were owners and holders of bonds. There was no averment or claim, either positively or negatively, as to these "103 bonds." A vendor's lien was, however, asserted as prior to the lien of the complainants.

(2) That the court solemnly adjudged against Schutte *et al.*, and in favor of the trustees, a first lien for the balance of purchase-money, without reserving to the latter the right to litigate for the surrender and cancellation of the said bonds.

REPLY.—Although the court did declare a lien in favor of the trustees, it was not necessary, in order for the appellees to be allowed to assert their present claim, that the court should reserve to them the right to litigate concerning title to the bonds. The decree of the court was in accordance with the pleadings. The pleadings related only to the relative priority of certain liens. For all that the court knew to the contrary, every bond might in equity belong to the trustees, when the question of its title came to be examined.

(3) That after the property of the road was sold, subject to the vendor's lien, it would be a fraud upon the Schutte bondholders and the purchasers at the sale to cancel the bonds and credit the amount they represent upon the former decree in favor of the trustees.

REPLY.—The Schutte bondholders, to the prejudice of whom the lien was declared, were made by the decree second lien holders. Through their trustee, Adolph Engle, they bought the road at the sale subject to the trustees' lien. How could it be a fraud upon them, after their purchase of the road, to increase the value of their property by a reduction of the lien under which they purchased it? It would indeed be a fraud upon them *not* to reduce the lien by a cancellation of the bonds, if possible when, as holders of State bonds, they were entitled, as they thought, at the time they bought them, to a first lien upon the property, and it was only through the sheer fraud of others that it was possible for any lien to be declared as prior to their own.

It is claimed that the Jacksonville, Pensacola & Mobile Railroad Company, or Milton S. Littlefield, may urge fraud. It is said that the road was purchased for the Dutch bondholders at the sale for the cash sum of $50,000, subject to the trustees' lien. The argument doubtless is that it is unfair to reduce the amount of the lien in this way after the property has passed from their hands subject to the lien, because the cash consideration that moved to them at the sale was based upon the estimate of a continued lien to the whole amount of the unpaid purchase-money. But to this it is sufficient to answer.

a. Non constat, that a larger sum than $50,000 cash would have been paid at the judicial sale had the lien for unpaid purchase-money been declared to be less by $103,000 than it actually was. The cash consideration for the purchase was only nominal, the main consideration being the surrender by the purchasers (the Dutch bondholders) of their own lien on the property for over $4,000,000.

b. The Jacksonville, Pensacola & Mobile Railroad Company and M. S. Littlefield, having originally obtained their property without paying for it in full, and having undertaken to pay the balance of purchase-money in a certain way, it would be strange if they were entitled to expect more for their property merely because the delayed fulfillment of their undertaking made it necessary for their creditors to protect themselves by a lien, until it should be declared that they had fulfilled it.

c. Neither the Jacksonville, Pensacola & Mobile Railroad Company nor M. S. Littlefield are here as parties objecting to the surrender and cancellation of the "103 bonds."

(4) That it has already been decided by the Supreme Court of Florida adversely to the claims of the appellees.

REPLY.—All that was decided in Trustees *vs.* Jacksonville, Pensacola & Mobile Railroad Company *et al.*, 16 Flor. 725, *apropos* of the present case, was that there cannot be *in the same proceedings* two inconsistent final judgments against the *same defendant* based upon the *same pleadings* of the same plaintiff, and that a decree for the cancellation of bonds could not be made *under the circumstances*, after a lien had been declared. It need only be said that the present proceedings are entirely different from those in which the lien was declared — that the pleadings are different, that the active parties are different, and that therefore even if the opinion of the Florida court is of any value here as a precedent, its decision does not apply. Indeed, it would seem to have been in the mind of the Florida court, upon whose decision the appellant relies, that such a case as the present might arise when the cancellation of bonds covered by a lien might be demanded, by reason of an equitable title to them. That court was therefore careful to limit its decree as above stated. For that court not to have done so and for this court not to consider, on its merits, the question of the equitable title

to the bonds in controversy freed from every embarrassment that comes of importing into the case considerations that belonged in another where a totally different question was considered, would lead to making *bona fide* holders of equitable titles, who had been unfortunate enough to have been compelled to defend litigation which challenged their rights, the prey of every adventurer who might seek to mend his fortune by urging technical rules of law against them.

(5) That by the Trustees' assertion of a lien in the Schutte Case, they misled the holders of the outstanding bonds who relied upon them to protect their interests.

REPLY.—The assertion of a lien was for the direct protection of the holders of outstanding bonds, as well as for the better securing of that portion of the purchase-money debt for which there were no bonds outstanding in law, but which had not yet in fact been cancelled.

It is clear that the holders of the outstanding bonds would now have a less valuable security had the trustees not insisted for them upon the priority of the purchase-money lien. At the same time the trustees by that action did not assert or mean to assert that these particular bonds were or were not outstanding. The determination of that question belonged in the litigation in this case, then pending.

The assertion that the position of the Trustees is iniquitous in their declaring that a debt did not exist after they have received payment for it, is a confusion of statement. The contention of the trustees in the Schutte Case, it has been seen, was only that until payment of purchase-money was made, a lien for its amount should lie on the property. It does not appear by the declaration of a court that this lien or the purchase-money it was meant to secure has been paid at all. The present contest is merely to determine this question as to a portion of the claim. Neither the Jacksonville, Pensacola & Mobile Railroad Company nor Milton S. Littlefield nor their

privies in contract or estate who have received and used the whole amount of the original purchase-money, have any proper right to object to the reduction of this lien by surrender and cancellation of bonds. After they have obtained and used a property which they did not fully pay for, and the property passes with an acknowledgment of that fact upon it, it would be strange if they could on this account object to the payment of the debt by the appropriation of bonds which were bought to liquidate the debt, and which, it is submitted, in equity did liquidate it *pro tanto* when the right to their possession came to the trustees, April 12, 1871.

(6) That to declare that these bonds be surrendered and cancelled is to put their value as an asset into the treasury of the present owners of the road.

REPLY.—If the bonds were equitably the property of the trustees when they were paid for by Littlefield, April 12, 1871, the fact that the railroad has since passed into other hands cannot affect the obligation to cancel their lien.

(7) That a surrender and cancellation of these bonds would be double payment.

REPLY.—This cannot be, so long as the trustees have not actually received the purchase-money of their property. The fact that they are entitled to a first claim on the assets of the company, which is all that a first lien means, does not, until they have received a money value for their claim, extinguish it or bar them from using all means in their power to extinguish it.

(8) That Littlefield, having bargained for the bonds, was under no obligation to the trustees to purchase the bonds for them.

REPLY.—Hon. H. Bisbee, himself, swears [Record, p. 265]

that Littlefield and the railroad company had purchased the said bonds under an agreement to purchase and deliver them to the trustees. The answer of the Trustees in the present case avers [Record, p. 493], and the testimony of Milton S. Littlefield shows, that the undertaking to deliver the bonds was with the Governor of the State of Florida, who was *ex-officio* chairman of the board of trustees.

(9) That the Dutch bondholders have no further interest in the surrender of the bonds, and that the board of trustees have no privity in the contract to deliver the bonds.

REPLY.—The Dutch bondholders were obliged to purchase the bonds subject to a lien ahead of their own, which would not have been necessary had the original purchase-money been paid by the surrender of the bonds. And even if the special contract to deliver the bonds was not in fact made with the trustees as such, Littlefield and the Jacksonville, Pensacola & Mobile Railroad Company were in equity bound to deliver them, because the consideration for the delivery moved to them and was actually received by them. And, moreover, the contract was, in fact, executed, so far as the equitable right to them was concerned, when Milton S. Littlefield completed the payment of the purchase-money for them to Houston in April, 1871.

It is believed the objections of the appellants to the equity of the appellees' claim, and the appellants' claims themselves, will be found to be without merit when examined in the light of all the facts.

The one conceded fact of this controversy is, that Milton S. Littlefield bought these "103 bonds" and that they were finally paid for by him April 12, 1871. The contention of the appellees is, that by virtue of the obligations and agreements of Littlefield they became on that day the property of the trustees of the Internal Improvement Fund. This, Milton S. Littlefield himself practically admits.

[Record, page 79.]

Had I received the bonds at the time they were paid for, or at the time I made the contract for their purchase, I should have delivered them to the governor for cancellation. I should have delivered them up for the purpose of discharging the lien they held on the road, so as to be enabled to give a security or lien to the State, and relied being paid moneys that I had advanced out of the proceeds of the sale of the State bonds.

[Record, page 83.]

Q. If there had been no litigation over these "103 bonds," and they had been delivered to you when paid for, according to the agreement with Houston, would you not have delivered them to the board of trustees for cancellation or cancelled them yourself?

A. As I have frequently testified before, I have no doubt that I should have delivered them to the trustees.

If Littlefield was bound to deliver these bonds to the Trustees in April, 1871, they belonged, as of that date, to the Trustees; and no subsequent alleged mortgage or bill of sale of them or judicial sale of them can pass this property from the Trustees.

The alleged mortgage to Calvin Littlefield was not made till July, 1871, and the alleged bill of sale to him was made in 1872. At the time from which the appellant Littlefield traces his alleged title, there was in Milton S. Littlefield no property of the kind to be passed from him. It would seem to be part of an ingenious, but none the less transparent, scheme that seeks to establish the continuance of title in Milton S. Littlefield by the legal operation of subsequent proceedings in which the appellees were parties. The fraudulent and baseless character of the positive features of the claim erected upon this hypothesis it is not necessary to this argument to consider. It is sufficient to insist for the appellees that their duty to their *cestuis que trustent*, as well as to those who to their cost relied upon the undertakings of Littlefield to deliver these bonds to the Trustees, is not fulfilled until they are permitted to cancel them in payment of the purchase-money due May 31, 1879, and are thereby, in a measure, permitted to right the wrongs which many interests have suffered through the frauds of Milton S. Littlefield and his associates.

It is submitted that the decree of the court below should be affirmed, and that the "103 bonds" be surrendered to the Trustees for cancellation as a credit on the amount declared to be due, as of May 31, 1879.

WAYNE MACVEAGH,
For Appellees.

It being of great importance that the litigation in the above-entitled cause should be brought to a close, it is ordered, that the parties to the suit be placed upon the following terms, namely:

First—That the said complainants, E. C. Anderson and others, shall file their answer to the cross bill of the said Marcellus L. Stearns, Governor, *et al.*, within ten days from the date of this order, or the said cross bill shall be taken *pro confesso* against them.

Second—The said Marcellus L. Stearns and others shall place their exceptions or replication to said answer upon file within ten days from the filing of the latter, or the said cause shall be held to be at issue without replication, and the same order in reference to answers to any exceptions.

Third—That the time for taking testimony by the said parties be strictly limited to three months and twenty days from the date of this order, and that the case be set down peremptorily for trial at the next term of this court.

Fourth—That either party, upon ten days' notice to the other, shall be allowed to take testimony before Aristides Doggett, Esq., Master, who shall act as examiner, both parties retaining full power to examine witnesses by commission and interrogations or by any other
2 method authorized by the law. It is further ordered, that the said Master shall give immediate notice through the public gazettes heretofore used by him for such purpose to all parties who may claim an interest, direct or indirect, in the bonds which have been deposited with him by T. Mayhew Cunningham, trustee; that he holds said bonds in his custody subject to the final order of this Court; that the said bonds are claimed by the trustees of the Internal Improvement Fund as having been purchased from Edward Houstoun by the Jacksonville, Pensacola and Mobile Railroad Company, under agreement with said trustees, for the purpose of cancellation; that upon petition filed with him, the said Master, and ten days' notice to the said trustees, and at any time before the first day of the next term of the Court, he will take testimony touching the claim or interest or title of any such petitioner upon or to the said bonds, or any part thereof; and that unless petition be filed in accordance with this order, all right, title and interest of any such person to or in the said bonds would be forever adjudged to be barred. It is further ordered, that the said Master shall give direct personal notice of like character to T. L. Clingman and "The Western Division of the Western North Carolina Railroad Company," both of the said State of North Carolina; to S. W. Hopkins & Company and Henry J. Rogers, of the State of New York; to Francis B. Pouches, of the State of South Carolina; to Andrew J. Miller, the executors of the estate of Edward Houstoun, and D. P. Holland, of Georgia; to Mariano D. Papy,
3 Edward M. L'Engle; Edward M. L'Engle, attorney and solicitor for Francis P. Poucher and others; Edward M. L'Engle,

attorney and solicitor of Andrew J. Miller and others; Milon S. Littlefeld and James G. Gibbs, of the State of Florida.

It is further ordered, that the said Master shall return such petition, with the evidence taken thereon, to this Court; that the same may be heard and disposed of at the trial of the above-entitled cause, unless it shall hereafter be otherwise directed.

It is further ordered, that the said Master be clothed with the usual powers of enforcing the attendance of witnesses and the production of books and papers and all other powers of a Master, that may be necessary for the purpose of executing this order.

The above order is made by consent of the various parties represented by their counsel before the Court, namely, the counsel for the complainants and the counsel for the said trustees and other defendants.

J. P. BRADLEY, *Judge.*

May 18th, 1885.

[Endorsed:] Anderson vs. Trustees. Filed this 18th day of May, A. D. 1875. Philip Walter, Clerk.

4 In the Circuit Court of the United States, Northern District of Florida.

EDWARD C. ANDERSON, *et. al.*,
vs.
MARCELLUS L. STEARNS, GOVERNOR, *et al.*

Notice is hereby given to all persons who may claim an interest, direct or indirect, in the bonds of the Pensacola and Georgia and Tallahassee Railroad Company to the amount on their face of $103,000.00 which has been deposited with me by T. Mayhew Cunningham, trustee, that said bonds are held in my custody, subject to the final order of said Court; that the said bonds are claimed by the trustees of the Internal Improvement Fund as having been purchased from Edward Houstoun by the Jacksonville, Pensacola and Mobile Railroad Company, under agreement with said trustees, for the purpose of cancellation; that upon petition filed with the undersigned and ten days notice to the said trustees, and at any time before the first day of the next term of said Court, I will take testimony touching the claim or interest or title of any such petitioner upon or to the said bonds or any part thereof; and that unless petition be filed in accordance with this order, all right, title and interest of any such person to, or in, the said bonds, will be adjudged to be forever barred.

A. DOGGETT, *Examiner.*

5 To the Honorable the Judges of the Circuit Court of the United States, Northern District of Florida.

EDWARD C. ANDERSON, JR., *et al.*
vs.
MARCELLUS L. STEARNS, GOV., *et al.*, TRUSTEES OF THE INTERNAL Improvement Fund of Florida, *et al.*—Petition in this cause.

Petition of Marcellus L. Stearns, the Governor of the State of

Florida, and Marcellus L. Stearns, *et al.* The trustees of the Internal Improvement Fund of Florida, respectfully show and aver that the one hundred and three thousand dollars, in the bonds of the Pensacola and Georgia and Tallahassee R. R. Companies, which has been registered and filed with A. Doggett, Esq., the Master in said cause, duly appointed in the name of T. Mayhew Cunningham, trustee, and the coupons thereto attached, are the property of the said trustees, and that the right to have said bonds delivered up to said trustees for cancellation has become vested and that the State of Florida has an interest and equity therein and in their delivery and cancellation, superior to and exclusive of any right, title or interest of any other parties who here filed their petitions before the said Master, setting up claims thereto.

Your petitioner avers, that under the Act to perfect the public works of the State of Florida, approved June 24th, 1869, and the Act
6 amendatory thereof, approved January 28th, 1870, the J. P and M. R. R. Company, a corporation organized under said acts, was entitled to an exchange of its bonds with the State of Florida, for the bonds of that State at the rate of sixteen thousand dollars per mile of road and by or belonging to said company, and that, under said Act, the Governor of said State did, in the spring of the year 1870, deliver to said company three thousand bonds of the denomination of one thousand dollars each, issued by the State of Florida for a like amount of said company's bonds of like denomination, and in accordance with said acts of the Legislature of Florida.

That said acts require that the railroad bonds to be issued by said company should be first mortgage bonds, and that before the then Governor of Florida would or did consent to the exchange of said bonds he required and demanded of the said company and its officers, Milton S. Littlefield being then the president thereof, that said company and its officers should take up and make proper provision for the taking up and delivery to said board of trustees all of the bonds of the said P. and G. and T. R. R. Company then outstanding, which said company, through the president thereof, Milton S. Littlefield, agreed and consented to do. And the said president of said company did represent to said Governor that he and said company, or one of them, had purchased or made proper provisions for the purchase and payment of all of said P. and G. and T. R. R. bonds then outstanding, about some two hundred and twenty-seven thousand
7 dollars thereof, and for that sum said J. P. and M. Company, through and in the name of the president thereof, drew its draft upon S. W. Hopkins and Co., the then financial agents of said company, payable to the order of Harrison Reed, Governor, for the purpose of paying the same to said board of trustees.

Petitioners further aver, that after said agreement between said company and its president and the Governor of Florida, the one hundred and three thousand bonds aforesaid were purchased of Edward Houstoun, under a contract between said Houstoun and said Milton S. Littlefield, but were paid for by the said J. P. and M. R. R. Company

out of the proceeds of the said State bonds, the property of the said company.

Petitioners further aver, that after said Houstoun was paid for said bonds, without authority from said railroad company, or its officers, or any of them, the said Houstoun delivered them to M. D. Papy, while at the same time certain suits against said Littlefield & Co., and wherein he had been garnisheed, were dismissed; and that said Houstoun knew, when he so delivered them to said Papy, that it was the right of your petitioners to have them delivered up to said trustees.

That on the 20th day of March, 1872, your petitioners commenced a suit against said J. P. and M. R. R. Company, Milton S. Littlefield, M. D. Papy, *et al.*, wherein inter alia it was averred that on the 20th day of March, A. D. 1859, the railroad west of Lake City, before then owned by the said Pensacola and Georgia and Talla-
8 hassee Railroad Company, sold by said trustees, and one T. Dibble and his associates became the purchasers; that one George W. Swepson, who then owned a large interest in said railroad, was appointed the financial agent of said trustees, and gave his receipt to the said trustees for a balance of purchase money to the amount of some $472,000, and agreed with said trustees to take up and deliver to them the then outstanding bonds of said P. and G. and T. R. R. Companies.

Your petitioner avers, that after said sale of said railroads said Swepson contracted with said Houstoun to purchase said $103,000 of bonds and some railroad stock, and in the fall of 1869 sold and conveyed to said Littlefield all his interest of every kind in railroad property in Florida, and said Littlefield contracted with said Swepson to take said Swepson's receipt to said trustees, either by paying the money or purchasing the bonds, and that said Littlefield agreed to carry out and perform said contract with Houstoun.

Your petitioners aver that in said suit by them it was averred that all the stockholders of the J., P. and M. R. R. Company acquired this stock, with notice this said purchaser did not actually pay said balance of purchase money, and the said Littlefield owned three-fourths of said stock.

Your petitioners further aver, that in the suit last above mentioned in the Circuit Court of Duval County, M. D. Papy, Littlefield and J. P. and M. R. R. Company were enjoined from disposing of or parting with the possessions of any of the bonds of the said P. and G. and T. R. R. Company, then owned and controlled by them, that such
9 injunction was never dissolved, and that on the 20th of August, A. D. 1875, the said Court rendered a decree now of full force and effect adjudging said one hundred and three bonds and coupons aforesaid to be the property of said trustees and State, and enjoining perpetually the said defendants, the J. P. and M. R. R. Company, and Milton S. Littlefield, from setting up or claiming said bonds and coupons, or any of them, in any Court or place.

Your petitioner further avers, that long after said Papy was so enjoined and long after he had answered in said suit admitting he held

the possession of said bonds, said Houstoun, to evade and defraud the jurisdiction of said Circuit Court of Duval County, commenced a suit in the State Court of Georgia against said Papy, ordering the pendency of said suit in Circuit Court of Duval County and that said Papy had been enjoined as aforesaid, and said Houstoun, in his said suit, caused Papy's arrest, and the said bonds to be taken away from said Papy, and to be brought and deposited with said Masters aforesaid, under color of certain alleged orders of said State Court of Georgia, which Court held no jurisdiction in the premises.

To support the foregoing averments, petitioners refer, and pray the Court may refer, to the testimony of witnesses and documentary evidence taken in the above cause, and on the petitions of the executrix of M. D. Papy, aforesaid, Henry J. Rogers, Robert J. Washington and executors of Edward Houstoun, and such other testimony as may be taken on said petitions.

The premises being duly considered, your petitioners pray
10 that this Honorable Court will order said bonds to be delivered up to said trustees, and give full force and effect to the decree of said Court of Duval County aforesaid, and grant such further relief as may be just and equitable.

M. L. STEARNS,
Governor of Florida.
H. BISBEE, JR.,
Solicitor for Trustees and State.

M. L. STEARNS,
President Bd. Trustees In. Im. Fund.
W. C. COCKE,
CHAS. H. FOSTER,
C. A. COWGILL,
Trustees I. I. F. of Florida.

[Endorsed:] In Circuit Court, United States Northern District of Florida. Edward C. Anderson *et al. vs.* Marcellus L. Stearn, Governor *et al.* Petition by defendants. Filed January 13th, 1876. Philip Walter, clerk. H. Bisbee, Jr., defendant's solicitor.

In the U. S. Circuit Court, 5th Circuit, Northern District of Florida.

11 EDWARD C. ANDERSON, Jr., *et al.*,
vs.
THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA.
In the Master's office.

In accordance with the decree made in this cause on the day of May, 1875, by the said Court at Jacksonville, Robert I. Washington, of Westmoreland County, Virginia, presents this, his petition, and alleges that under a decree rendered by this Court in the 2d day of December, 1873, in the cause wherein I. H. Miller is complainant and Milton S. Littlefield and others are defendants, all the right, title and interest of Milton S. Littlefield in and to $96,500 at par value of bonds of the Pensacola and Georgia Railroad Company, and $6,500 at par value of bonds of the Tallahassee Railroad Company,

were, on the 2d day of August, 1875, sold at public outcry by F. P. Fleming, as Special Master of this Court appointed in that cause, and were purchased by this petitioner, who clalms them as his property by virtue thereof.

That the said bonds are the same which have been deposited with the Master and Examiner in this cause by T. Mayhew Cunningham, trustee, and which are held in the said Master's and Examin-
12 er's custody, subject to the final decree of this Court.

Wherefore this petitioner prays leave to appear and defend his interest and title in and to the said bonds.

ROBERT I. WASHINGTON,
By E. M. L'Engle, his Attorney.

[Endorsed:] In the United States Circuit Court, Northern District of Florida. E. C. Anderson, Jr., *et al. vs.* Marcellus L. Stearns, Governor, *et al.* The petition of the executors of Edward Houstoun, filed in the matter of the bonds to the amount of $103,000 on their face, sold by him, etc., etc. Filed June 12, 1875. A. Doggert Master and Examiner. Jackson, Lawson & Bassinger, Solicitors for Petitioners.

EDWARD C. ANDERSON, Jr., *et al*,
13 *vs.*
MARCELLUS L. STEARNS, GOVERNOR, *et al.*
In Equity.

In the Master's office of the Fifth Circuit Court of the United States for the Northern District of Florida.

In the petition of James P. S. Houstoun, Raymond M. Demere, and James H. Johnson, of the State of Georgia, respectfully shows that, on the day of in the year 1875, Edward Houstoun, late of the County of Chatham and State of Georgia, departed this life, leaving a last will and testament of which he appointed your petitioners to be the executors; and that, subsequently, your petitioner took out letters testamentary from the Ordinary of said Chatham County authorizing them to execute the said will, which said letters are herewith submitted to the Court for inspection.

Your petitioners further show, that during the lifetime of their said testator, to-wit, on the 15th day of May in the year 1870, Milton S. Littlefield contracted to purchase from him certain capital stock in the Florida Central Railroad Company, and also bonds of the Pensacola and Georgia and the Tallahasse Railroad companies, issued under the Internal Improvement Act of January 6th, 1855, amounting upon their face to one hundred and three thousand dollars; and that he,
14 the said Littlefield, did place in the hands of said testator, as collateral security for the payment of a draft drawn by him for the purchase money of the same, upon S. W. Hopkins & Co., of the city of New York, a certificate of stock for three thousand three hundred and ten shares in said Florida Central Railroad Company, but your petitioners allege that said testator retained in his own hands the said railroad bonds and the said railroad stock, so contracted to be sold by him, until the purchase money contracted to be paid for the same

should be actually paid. Your petitioner further aver that the certificate for the three thousand one hundred and ten shares was held by testator in the hands of his agents at the said city of New York; that during the month of August or September following, suits were instituted in said city and State of New York, by persons doing business under the firm name of Rogers & Bayne and by L. P. Bayne against the said M. S. Littlefield, and processes of garnishment were served upon testator's said agents, but that fortunately, advised of the probable institution of such proceedings, testator's said agents had previously transferred the said certificate to the State of New Jersey.

That in the said month of September testator chanced to be with his family at Atlantic City, in the State of New Jersey, and process of garnishment was there served upon him personally, which said process had been issued at the suit of T. L. Clingman, of North
15 Carolina, against the said M. S. Littlefield.

That testator having subsequently removed to Philadelphia, immediately upon his arrival there he was again served with another process of garnishment issued in another suit by the said Clingman against the said Littlefield.

That in the month of October following testator, being then in the city of New York, "The Western Division of the Western North Carolina Railroad Company," being a North Carolina corporation, instituted its action in the Supreme Court of the State of New York against said testator and others, claiming right and title to the said three thousand one hundred and ten shares of the capital stock of the Florida Central Railroad Company, upon the ground that it had been originally purchased with moneys belonging to it, and held by one George W. Swepson, who had been president of said railroad company, who had so purchased said stock, and who has transferred it to the said M. S. Littlefield.

And your petitioners further aver, that the last named suit, in the State of New York, and the said suit of Clingman against Littlefield, in the State of Pennsylvania, are still pending; and that said testator, under advice of his counsel that it was necessary so to do for his own protection, resisted, and your petitioners, his executors, are resisting the same.

16 Your petitioners further allege that on the 12th day of April, A. D. 1871, in consideration of the fact that the said S. W. Hopkins & Co. then paid to testator the amount of the said draft so given to him by the said Littlefield, their said testator entered into an arrangement with S. W. Hopkins, representing the said firm, that the said certificate of stock, hereinbefore described, together with other shares of the capital stock of the same railroad company which the said Littlefield had so as aforesaid contracted to purchase, but which were still standing in the name of Edward Houstoun, said testator, Edward Houstoun, guardian of Eliza B. Houstoun and Edward Houstoun, guardian of Claudia Houstoun and James S. Houstoun, making with the stock first aforesaid an aggregate of about four thousand three hundred and seventy shares, should be placed in charge of Mariano D. Papy, who was to hold the same, and not to deliver it to any

person, unless he should be directed so to do by the said M. S. Littlefield and S. W. Hopkins, jointly, or unless he should be directed by said Hopkins to deliver the same to said Littlefield, or by said Littlefield to deliver the same to said Hopkins.

And it was further agreed, that the said first-mortgage bonds of the Pensacola and Georgia Railroad Company and the Tallahassee Railroad Company, amounting on their face to one hundred and three thousand dollars, should be also placed in charge of said Papy to be held by him subject to the same terms and directions. And it
17 was further and finally agreed that the delivery of said certificates and said bonds was not to be made unless, in addition to the requirements aforesaid, the said suits so instituted as aforesaid in the State of New York and Pennsylvania and New Jersey should have been dismissed, which dismissal the said S. W. Hopkins & Co. then undertook to effect; but, subsequently having failed to effect it, and being pressed by said testator to fulfill their said undertaking in that regard, replied that said testator held said securities and property to make him safe for all losses and expenditures in the premises, and that therefore testator could better resist, or procure the dismissal of the same.

Your petitioners here pray leave to refer to the Answer of the said Mariano D Papy to the original bill filed by the State of Florida and the Trustees of the Internal Improvement Fund against the Jacksonville, Pensacola and Mobile Railroad Company, *et al.*, in the Circuit Court of Duval County, which said answer forms part of a record appended to the Answer filed by the said Marcellus L. Stearns, Governor, *et al.*, in the above entitled cause and embraces a copy of the arrangement, so as aforesaid entered into by said testator with the said Hopkins, and which with all of its exhibits, your petitioners pray may be taken as part and parcel of this their petition, precisely as if the same were herein repeated word by word.

18 Your petitioners aver that their said testator had retained the said bonds, and the certificates of the said shares of stock, so contracted to be sold by him until the purchase money should be paid in accordance with the contract of purchase; that the contract of purchase was not fulfilled by the said Littlefield in accordance with the terms thereof; and that their said testator was thereby relieved from all obligations in the premises, and that he entered into said arrangement with the said Hopkins simply because he was indisposed to press his clear legal rights beyond constraining a substantial fulfillment, even after condition broken, of said contract or purchase.

Your petitioners further show that subsequently their said testator, upon bill filed, obtained from the Superior Court of the County of Chatham, in the State of Georgia, a writ of *ne exeat* against the said Papy, under which he was arrested, and, in default of bail, was forced to surrender the said bonds, which were placed in charge of T. Mayhew Cunningham, subject to the further order of the said Superior Court.

Your petitioners aver that, when the said arrangement was made between himself and the said S. W. Hopkins & Co., said bonds

and the said certificate of stock were actually in, and had never been removed from, the City of Savannah, in the said State of Georgia; that at the time they were placed under the control of the said Papy it was understood that they were not to be removed by him from the said city; that their testator had good reason to fear, the reasons for such apprehension being fully set out in his petition to
19 the said Superior Court, that he would be subjected to the most serious trouble and losses should the said securities be removed by the said Papy beyond the limits of the State of Georgia, and more especially should they be taken to the State of Florida, and within the jurisdiction of the said Circuit Court of Duval County. But your petitioners further aver, that it was not his purpose, in thus seeking protection from the said Georgia Court to interfere with the rights of the said Jacksonville, Pensacola and Mobile Railroad Company, or of the said trustees of the Internal Improvement Fund, or of the State of Florida, or of any person whatsoever, in the said bonds, did any such right in fact exist. That to their said testator it ever had been a matter of the most absolute indifference to whom of the multitudinous parties claiming a right to the said stock and said bonds, the same should be finally allotted, provided such allotment should be so made by decree of the same Court of competent jurisdiction, or in some other manner, as to protect their said testator from loss, and to place him where he would have been placed by a practical fulfillment on the part of said Littlefield of his said contract of purchase. And, therefore, when it became known to their said testator that a decree had been rendered by the Circuit Court of the United States for the Northern District of Florida, in favor of E. C. Anderson and others, holders of the same class of bonds with those which had been so placed
20 in the hands of said Cunningham, and notice was given under direction of said Court, that all bonds of said class should be deposited with the Master in Chancery appointed in said cause, and their said testator was advised that it was his duty to do all in his power to secure a recognition of right for whomsoever might make good his claim to the property in said bonds, after the said trust had been discharged by the dismissal of the said suits first hereinbefore referred to, and also of the various suits, injunctions, etc., which had subsequently been instituted and issued against the said testator and the said Papy in regard thereto; and after the payment of the heavy losses and expenditures of money to which their said testator had been subjected by reason of the same, for which the said bonds and their legitimate proceeds were his only security. So advised, their said testator applied for and obtained from the said Superior Court of Georgia an order directing the said Cunningham to deliver the said bonds to Jackson, Lawton & Bassinger, solicitors, to be by them deposited with the said Master for the purpose aforesaid. Your petitioners respectfully submit that neither the said Littlefield nor the said Jacksonville, Pensacola and Mobile Railroad Company, nor the trustees of the Internal Improvement Fund of Florida, nor any person or party claiming, directly or indirectly, legally or equitably from them or either of them, can set up title to the same until the conditions of the said

21 arrangement shall have been fully complied with in the dismissal of the said suits so as aforesaid pending in New York and Pennsylvania; nor until all other proceedings, at law or in equity, which have been instituted since the date of said agreement in regard to the same subject matter, and which are now pending against the said testator and the said Papy; that is to say, the case of the State of Florida and the trustees of the Internal Improvement Fund against the Jacksonville, Pensacola and Mobile Railroad Company and others in the Circuit Court of Duval County; the case of Edward M. L'Engle against Milton S. Littlefield, Aaron Barnett, Edward Houstoun, Mariano D. Papy and others in the same Court; the lease of the same against the same in the Circuit Court of Columbia County; the case of Francis P. Porcher for himself and others against the Trustees of the Internal Improvement Fund, Edward Houstoun and others, in the Circuit Court of the United States for the Northern District of Florida; the case of Andrew J. Miller vs. Milton S. Litlefield, Edward Houstoun, and others, in the same court; the case of Henry J. Rogers against Edward Houstoun and the said Cunningham, in the Superior Court of Chatham County, in the State of Georgia; the case of James G. Gibbs against Edward Houstoun and T. M. Cunningham, in the Circuit Court of the United States, for the Southern District of Georgia, and any other case of kindred character which may be now pending or which may be hereafter commenced, shall have been finally disposed of; nor until the estate of the said testator shall have been fully reimbursed for the heavy
22 losses, expenditures and pecuniary responsibilities to which he has been subjected by this multitudinous litigation, nor until the estate of the said testator shall have been placed where, in equity and good conscience, it ought to be placed, in quiet possession of the full value of the property which which said testator so contracted to sell, for himself, and as trustees for others, at moderate prices, unreduced by the losses and expenditures so, as aforesaid, incurred through no default or shortcoming of his own, in protecting the same, and freed from all danger of like losses, complications and expenditures in the future. For this purpose, of protecting himself, the said trust, in the said arrangement between said testator and the said S. W. Hopkins & Company, was created, and until said trust shall have been fully executed your petitioners insist that the title to the property embraced in said arrangement, more especially the title to the said bonds, must remain in them, executors of said testator. Your petitioners aver that they must needs look wholly to the proceeds of the bonds for security and for remuneration. And that wholly apart from the wear and tear upon the health and life of their said testator, resulting from the perpetual annoyance, distress and anxiety to which, through several years, he was subjected, and of which no estimate can possibly be made in money, he was constrained to incur, because of the failure of said Littlefield to perform his contract of purchase; because of the failure of the said Hopkins & Com-
23 pany to fulfill their said undertaking, by the dismissal of the said suits first above mentioned; because of the subsequent in-

stitution of the various proceedings in law and equity already referred to, and originating in the same transactions and failures of duty; because of the necessity imposed upon said testator of appealing to a Court of Chancery in Georgia to protect him against the removal of the said property from its jurisdiction; because of the further duty thus devolved upon him of uniting in the effort to procure from the said Circuit Court of the United States for the Northern District of Florida, such action as would protect the rights of the holders of the said first mortgage bonds of the Pensacola and Georgia and Tallahassee Railroad companies, and so protecting them would protect said testator in his lien npon the bonds in controversy, he was constrained to incur expenditures and indebtedness to the amount of at least twenty thousand dollars. And in equitable allowance of the same he invokes the protection of this honorable Court.

24 JACKSON, LAWTON & BASSINGER,
Solicitors for Petitioners.

UNITED STATES OF AMERICA, }
Southern District of Georgia. }

Personally appeared before me, James P. S. Houstoun, who, having been first duly sworn, deposes and says, the contents of the foregoing petition, so far as they concern his own act or deed, are true, so far as they concern the act or deed of any one else he believes are true. J. P. S. HOUSTOUN.

Sworn to and subscribed before me }
this 9th day of June, 1875. }

25 (SEAL.) WILLARD F. WARNER,
U. S. Deputy Clerk.

[Endorsed:] In the Uuited States Circuit Court, Northern District of Florida. E. C. Anderson, Jr., *et al.*, *vs.* Maroellus L. Steards, Governor, *et al.* The petition of the executors of Edward Houstoun filed in the matter of tde bonds to the amonnt of &103,0CO on their face, sold by him, etc., etc. Filed Juee 12, 1875. A. Doggett, Masser and Examiner. Jackson, Lawton and Bassinger, Solicitors fos petitioners.

In the Circuit Court of the United States for the Northern District of Florida.

E. C. ANDERSON,
vs.
MARCELLUS L. STEARNS, Governor, *et al.*

To the Honorable J. P. Bradley, the presiding Justice in and for the Circuit Court of the United States for the Northern District of Florida, in Chambers sitting.

Your petitioner, Henry J. Rogers, is a citizen of the State of New York, residing in the City of New York, respectfully states and showeth unto your Honor, that about the 12th day of June last he received, pasted on a slip of paper, the following paragraph, cut from some newspaper published in Florida, originally printed on a blank slip of paper:

In the Circuit Court of the United States, for the Northern District of Florida.

26 E. C. ANDERSON,

VS.

MARCELLUS L. STEARNS, Governer, *et al.*

Notice is hereby given to all persons who may claim an interest, direct or indirect, in the bonds which have been deposited with me by T. Mayhew Cunningham, trustee, that said bonds are held in my custody subject to the final order of said Court; that the said bonds are claimed by the Trustees of the Internal Improvement Fund as having been purchased from Edward Houstoun by the Jacksonville, Pensacola and Mobile Railroad Company, under agreement with said trustees for the purpose of cancellation. That upon petition filed with the undersigned, and ten days' notice to the trustees, and at any time before the first day of the next term of said Court, I will take testimony touching the claim or interest or title of any such petitioner upon or to the said bonds, or any part thereof; and that, unless petition be filed in accordance with this order, all right, title and interest of any such person to or in the said bonds will be forever adjudged to be barred.

June 8. A. DOGGETT,
Examiner.

27 That your petitioner, not being a party to said suit, so far as he knew, and never having been served with any subpœna or other notice that could in any manner effect his rights or require him to take notice of said suit, did not understand why such printed paragraph was addressed to him but perceiving that the said paragraph referred to one hundred and three thousand dollars ($103,000) of "the bonds which have been deposited with T. Mayhew Cunningham, trustee," which description and name alone enabled your petitioner to comprehend wherein he was in any manner interested in the subject matter of said printed paragraph, the same being, as he supposed from their description, a certain $103,000 of the bonds of the Pensacola and Georgia Railroad Company, which had been assigned to the petitioner in trust, together with certain stock of the Florida Central Railroad Company, which, being in the hands of one M. D. Papy, the counsel of one Edward Houstoun, was, by means wholly unknown to your petitioner and without his knowledge or consent, taken to Savannah, Georgia, where the said Papy was, or pretended to be, arrested by his client, the said Houstoun, and said bonds and stock placed in the hands of one T. Mayhew Cunningham, as receiver, and where your petitioner had instituted legal proceedings for the recovery of the same, which are still pending before a court of competent jurisdiction, your petitioner having no knowledge of said bonds being away from the custody of the Court in Savannah, and in the possession of said

28 Doggett till advised of that fact by said printed paragraph, and in order to be better advised your petitioner addressed a letter to "A. Doggett," who signed himself as "Examiner" to said printed paragraph, for information; and among other things asking to be advised when it would be proper for your petitioner to file his petition

as indicated in said paragraph, and under date of October 10th, 1875, he received a letter from said Doggett, which is made part hereof, marked "A."

That your petitioner, as soon as he could be advised as to what was the probable meaning of the said printed paragraph, there being so little specified on the face of it that his counsel could only conjecture the probable purpose of said printed paragraph from such general information as your petitioner could impart to him, which he did to the best of his recollection in the absence of any knowledge of the pleadings, and upon such information your petitioner's counsel prepared the petition, a copy of which is hereto annexed, marked "B," and sent the same to be filed before said Doggett, and requested that a commission be sent to an examiner in the City of New York to take proof in support of said petition, as your petitioner was advised was proper under the rules of equity practice.

That your petitioner has been advised that said Doggett, as Examiner, declines to procure or send such commission to take such proof, and unless ordered to do so by a Justice of this Court, saying he has not the authority by virtue of his appointment so to do, and
29 hence your petitioner applies for such order as may be proper in that behalf.

But your petitioner further states, that he has only just learned, and that by mere chance, that he was made a party defendant to the above suit, by the special order of your Honor in the month of May last, which order so making your petitioner a party defendant was procured by the counsel for the complainants in this cause, but your petitioner never was served with any subpœna or copy of said order or by any other means advised that he was made a party defendant to the same, whereby he could appear by his counsel, and be advised in what manner to answer or plead to the same, and what proof it is proper he should offer in the premises.

That instead of serving your petitioner with subpœna, or with a copy of the order making him a party to said suit, so that he could appear thereto and make his defence to the bill of complaint and by proper answer and cross bill assert his rights, that the complainant in this cause has proceeded to take ex-parte testimony without any notice whatever to your petitioner, and, as your petitioner is advised, proposes to seek to use the testimony so taken to assail your petitioner's rights at the next term of this honorable Court to commence on the 6th day of December next.

That your petitioner is wholly surprised at finding himself a party defendant to this suit, and believes that a knowledge of his
30 being such a party has been kept concealed from him fraudulently for the purpose of securing ex-parte orders and taking ex-parte proof in such manner as to prevent your petitioner having an opportunity to except to the competency of such proof or the questions propounded, and with the view of taking advantage of your petitioner on the hearing of said cause before the Examiner and this honorable Court. Your petitioner states that he is perfectly willing to appear in this cause as a party defendant and will do so immediate-

ly, but that it is not possible for him to do so in time for hearing at the December term. That he cannot file his answer till he can see and be advised of the bill of complaint, and cannot take his proof till such answer is filed, and that, as part of his proof will probably consist of certain judicial records and proceedings had in England as well as in the City of New York and elsewhere, and will be required to take the deposition of parties residing in England as well as in different parts of the United States, it is an utter impossibility for him to be ready before the next term of this Honorable Court. That aside from what appears in said printed paragraph he has no knowledge whatever of the manner he is affected by said proceeding, or what is charged or claimed in the bill of complaint, to which he has just been advised he is a party, and unless relieved by the proper order of your Honor will be subjected to the grossest injustice.

31 Wherefore your petitioner prays that the further hearing of this cause shall be continued till the next succeeding term of this honorable Court after the December term, 1875. That your petitioner be allowed the usual time to appear, demur, plead or answer to the bill of complaint. That your petitioner may also have leave to file his cross-bill as part of his answer, if on the reading of the bill of complaint he shall be advised it is proper he should do so, in order to assert his rights as trustee in the premises.

That the said depositions taken by or before the said A. Doggett, as examiner, may be ordered to stand open, subject to the exceptions and cross-examination of your petitioner, and that all of said witnesses shall be reproduced by the complainant or the party originally producing such witnesses for such cross-examination; and that your petitioner may have the right to move to suppress any or all of said depositions, in whole or in part, and that your petitioner may have the right to withdraw his petition filed before said Doggett, and appear by answer, or by answer and cross-bill, and that the examiner, A. Doggett, Esq., may be ordered to withhold any report till your petitioner can be heard on the merits of his cause as prayed in the premises.

That your petitioner, being a trustee in the discharge of an important and responsible trust, he prays the aid of this honorable
32 Court in the proper and lawful execution thereof by such other and further order as may be just and equitable in the premises.

HENRY J. ROGERS, *Trustee.*

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss.:*

Henry J. Rogers, being duly sworn, states that he has read the foregoing petition and knows the contents thereof; that the matters of his own knowledge are true, and the matters stated upon information he believes to be true.

HENRY J. ROGERS, Trustee.

Subscribed and sworn to before me, }
this 24th day of November, 1875, }

EDWARD J. ALLEN,
U. S. Commissioner for the Southern District of New York.

33

EXHIBIT B.

Circuit Court of the United Strtes for the Northern District of Florida.

E. C. ANDERSON,

vs.

MARCELLUS L. STEARNS, Governor, *et al.*

In the matter of one hundred and three bonds of the Pensacola and Georgia Railroad Company, deposited by T. Mayhew Cunningham, trustee, with A. Doggett, examiner.

To the Honorable the Judges of the Circuit Court of the United States for the Northern District of Florida.

Your petitioner, Henry J. Rogers, trustee, who is a citizen of the State of New York, in obedience to an order of this Honorable Court, purporting to be given and published by A. Doggett, Esquire, the examiner, a copy of which is appended hereto, marked "Exhibit A," exhibits this his petition against whom it may concern, and especially against the Pensacola and Georgia Railroad Company, the Jacksonville, Pensacola and Mobile Railroad Company, the trustees of the Internal Improvement Fund of Florida, Milton S. Littlefield, Marcellus L. Stearns, Governor of the State of Florida, and T. Mayhew Cunningham, and against all others who are material parties to this suit; and the subject to and within jurisdiction of this honorable

34 Court.

Whereupon your petitioner states and shows the facts to be: That previous to the seventh day of June, A. D. 1872, the Jacksonville, Pensacola and Mobile Railroad Company, by written contracts and stipulations entered into with Lawrence P. Bayne and with Lawrence P. Bayne & Company, a firm composed of said Lawrence P. Bayne and Henry J. Rogers, your petitioner doing business in the city of New York became and was justly indebted to the said L. P. Bayne in the sum of two hundred thousand dollars, and also became and was indebted to said Bayne & Company for a large amount of money advanced and paid to and for the use of said railroad company, and for a large amount of services rendered to and for said company under and by virtue of the said agreements and stipulations.

That said railroad company, having failed to fulfil its agreement with said L. P. Bayne and Bayne & Company, greatly to their loss and injury, suits were instituted against the said railroad company, S. W. Hopkins & Co., and others deemed responsible in law for the several breaches of contract and injuries committed in violation of the rights of said L. P. Bayne & Co., which were being duly and advantageously prosecuted by the said Bayne and said Bayne & Co., when it was offered on the part of the said Jacksonville, Pensacola

35 and Mobile Railroad Company, that all matters and subjects involved in litigation should be compromised and settled upon terms that were equitable and just, to which the said L. P. Bayne and Bayne & Co., together with other parties to said suits and litigations, assented.

That thereupon, and on or about the said seventeenth day of June, 1872, a convention was had of and between all the several parties in

interest in the subject matter of said suits and litigations, to which, among others, the Jacksonville Pensacola and Mobile Railroad Company, Francis H. Flagg and Converse L. Chase, trustees; L. P. Bayne and L. P. Bayne & Co, S. W. Hopkins, Frank H. Collins, R. J. Carpenter, and Henry J. Rogers, your petitioner, were parties each acting in person or by attorney duly authorized.

That by virtue of said convention of settlement and compromise, each being thereunto bound, a full and complete statement of all matters involved and at issue in said litigations and suits were duly stated and considered, and full and complete compromise and settlement was had, with full knowledge, assent and concurrence of all parties, when among other things it was shown that a debt, duly and lawfully contracted, exceeding the sum of of two hundred thousand dollars ($200,000) was justly and lawfully due to said Lawrence P. Bayne and said L. P. Bayne & Co., but, as a compromise and settlement thereof, it was ag eed to and admitted, as a
36 compromise and settlement, that the sum of one hundred and fifty thousand dollars ($150,000) was justly due and lawfully owing to said L. P. Bayne, the same being then and there so recorded and to bear interest from the said seventeenth day of June, 1872, aforesaid.

That as a security and means of payment of said indebtedness, it was further agreed, stipulated and covenated and entered into as part of said compromise and agreement, that a good and sufficient lien in law and equity was then existing, and then and thereby further declared to exist and vest in said L. P. Bayne, in, to and upon a certain twelve hundred (1,200) bonds, which lien should continue till the payment of said sum of $150,000, with said interest thereon from the said 17th day of June, 1872, as will more fully appear by reference to said convention and articles of compromise and covenants in that behalf entered into, with all and several the documents and papers thereunto appertaining, bearing date the said 17th day of June, 1872, and signed and sealed by the parties aforesaid, now referred to and prayed to be read as part hereof, marked "Exhibit B."

Your petitioner further states, at the time said L. P. Bayne assented to said compromise and settlement, and agreed to accept said reduced and modified consideration, and agreed to take a lien involved with the subject to other liens on said 1,200 bonds, and thereby relinquishing his priority, and as a consideration for so doing, and to guard against any possible deficiency in the means of such payment of said $150,000 and interest by virtue of such compromise, conces-
37 sion and relinquishment on the part of said Bayne, and as inducement thereto on the part of Jacksonville, Pensacola and Mobile Railroad Company, and M. S. Littlefield, the president of said railroad company, that he, the said M. S. Littlefield, would create a good and valid lien on a certain one hundred and three (103) bonds of the Pensacola and Georgia Railroad Company, and a certain four thousand, three hundred and seventy-three shares of the capital stock of the Florida Central Railroad Company, the same being known and appearing on the books of said company last named, as well as

marked, printed or written on the face of said certificates of stock, respectively, numbers 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 57, 58, 59, 79 and 80; and also certain four drafts of George W. Swepson on said Littlefield, and by the latter accepted, amounting in the aggregate to one hundred and nine thousand, three hundred and forty-three dollars, which said bonds, stock and notes were likewise being pursued and claimed as subject to said indebtedness to said Bayne, at the time said compromise and settlement was so made as aforesaid, and in order to complete the same and induce said Bayne to agree thereto, and as a further and specific consideration and security to him, the said Bayne, the said Littlefield did, on the 18th day of June, 1872, through and by his attorney in fact, Converse L. Chase, well and truly assign to your petitioner in trust the said one hundred and three bonds of the said Pensacola and Georgia Railroad Company, and the said four thousand three hundred and seventy-three (4,373) shares of the said capital stock of the said Florida Central Railroad Company, and the said four drafts upon and accepted by the said Littlefield, the same and every part thereof to be held, as
38 the same is now held, by your petitioner, as further and additional security for the payment to the said L. P. Bayne the said $150,000, with interest thereon so admitted and recorded as due him, under and by virtue of said compromise settlement aforesaid; and also to secure a further liquidated and adjusted indebtedness of $14,-124.44, with interest thereon, due to L. P. Bayne & Co., as evidenced by the notes of said M. S. Littlefield; so adjusted, compromised and settled and secured on said bonds and stock, as will better and more fully appear by the said assignment in trust, together with the certificate of one M. D. Papy and S. W. Hopkins & Co., made part thereof, hereunto annexed, marked "Exhibit C."

Your petitioner further states, that at the time the said compromise and settlement was made as aforesaid there was a suit pending in the Supreme Court of the State of New York, wherein John Collison was plaintiff and divers parties were defendants, and among others the Jacksonville, Pensacola and Florida Railroad Company and L. P. Bayne, the subject matter of said suit being the same in all respects as formed the subject of said compromise settlemeut of the said 17th day of June, 1872; and after the said compromise was so made there was a part payment of the said debt of $150,000 with interest, so found due the said L. P. Bayne, which reduced the amount thereof, but leaving a large balance due said Bayne, which is not yet paid or provided for other than by the terms of said additional security and trust of the said 18th day of June, 1872, assigning said one hundred and three Pensacola and Georgia bonds, and the said Florida
39 Central Railroad stock, and the said four drafts on the said Littlefield to your petitioner, to cover and provide for such deficiency aforesaid.

That in order to remove all questions or doubt as to the exact amount paid said Bayne, and to fix and determine the exact amount due him, and by the mutual consent of all the parties to said proceedings, and especially the said Jacksonville, Pensacola and Mobile Rail-

road Company and C. L. Chase, surviving trustee, and the Western Division of the Western North Carolina Railroad Company, and the said L. P. Bayne, each and all thereunto assenting that in the said suit last above mentioned, the said Supreme Court of the State of New York, that a judicial decree and order be entered finally adjudicating and settling of record the exact balance so due and owing to said L. P. Bayne, after giving all credits for payments under and pursuant to said compromise settlement of the 17th June, 1872, and that in and by said last and final judicial order it was adjudged and determined by the consent of all the parties thereto that there was still due and unpaid to said L. P. Bayne the sum of ninety-six thousand six hundred and fifty dollars ($96,650), with interest thereon, as will better appear by reference to said judicial order, so entered on 18th January, 1873, which is made a part hereof, marked "Exhibit D."

And your petitioner further states the fact to be, that the whole of said last named sum, to-wit, $96,650, is still due and unpaid to said L. P. Bayne, secured on said bonds aforesaid, subject to certain priorities mentioned in said order, and that the said debt is a just and
40 lawful lien upon the said hundred and three Pensacola and Georgia Railroad bonds, so held under said assignment, Schedule C, to your petitioner, to secure the payment of said debt to said Bayne, subject to a prior lien of about $25,000 in favor of T. L. Clingman, but subject to no other priority.

That your petitioner, therefore, shows the fact to be that he holds the said one hundred and three bonds so placed with said T. Mayhew Cunningham, and by him deposited with the Examiner of this honorable Court, for taking proof and reporting thereon as the assignee in trust to the use and benefit of said L. P. Bayne under and by virtue of said compromise agreement and settlement of the said 17th day of June, 1872, as Schedule B, and the special assignment in trust to your petitioner of said hundred and three bonds, made as part of said compromise settlement, dated 18th day of June, 1872, Schedule C, and for the exact amount named and specified in said judicial order of the 18th January, 1873, Schedule D, and for the payment of said sum of $14,126.44 so due to L. P. Bayne & Company, and as evidenced by the notes of said Littlefield, and provided for in said Schedule D, as aforesaid.

Your petitioner states, that when said hundred and three bonds were assigned to him as trustee that neither your petitioner nor his *cestui que* trust, the said Bayne, had notice or reason to suspect any other or adverse claimants thereto than such as were considered and released and transferred by or on the part of the several parties mentioned in said assignment in trust, Schedule C, and denies that any other
41 good or valid lien exists thereon superior or prior to the rights of your petitioner as trustee as aforesaid.

Wherefore your petitioner prays that he may be and remain unmolested in the discharge of his said trust, and especially to the said one hundred and three bonds of the said Pensacola and Georgia Railroad Company, and for which purpose the said bonds, or the proceeds thereof, if sold, paid or discharged, may be placed in the hands of

your petitioner for and subject to the purposes of said trust, to be by him applied according to the intent and meaning thereof by the order of this honorable Court; and that your petitioners may be decreed the immediate possession of said bonds, together with such further and other order as to this honorable Court may seem just and equitable in the premises, together with an allowance for his costs and expenditures in this behalf most wrongfully incurred.

HENRY J. ROGERS,
Trustee.

UNITED STATES OF AMERICA,
Southern District of New York. } *ss.:*

Henry J. Rogers, being duly sworn, says that he has read the foregoing petition, and knows the contents thereof; that the matters stated within his own knowledge are true, and that the matters stated upon information he believes to be true.

42 HENRY J. ROGERS,
Trustee.

Subscribed and sworn to before me,
this 20th day of October, 1875.
(Signed) EDWARD L. OWEN,
U. S. Commissioner for the
[SEAL.] Southern District of New York.

EXHIBIT A.

In the Circuit Court of the United States, Northern District of Florida.

E. C. ANDERSON,
vs.
MARCELLUS L. STEARNS, Governor, *et al.*

Notice is hereby given to all persons who may claim an interest, direct or indirect, in the bonds which have been deposited with me by T. Mayhew Cunningham, trustee, that said bonds are held in my custody subject to the final order of said Court; that the said bonds are claimed by the Trustees of the Internal Improvement Fund as having been purchased from Edward Houstoun by the Jacksonville, Pensacola and Mobile Railroad Company, under agreement with said Trustees for the purpose of cancellation. That upon petition
43 filed with the undersigned, and ten days' notice to the said Trustees, and at any time before the first day of the next term of said Court, I will take testimony touching the claim, or interest or title of any such petitioner upon or to the said bonds, or any part thereof; and that unless petition be filed in accordance with this order, all right, title and interest of any such person to or in the said bonds will be forever adjudged to be barred.

A. DOGGETT,
Examiner.

EXHIBIT B.

An agreement made this seventeenth day of June, 1872, between the Jacksonville, Pensacola and Mobile Railroad Company, by Converse L. Chase, their attorney, hereto duly authorized by power of attorney, of which a copy is hereunto annexed, of the first part, L. P. Bayne & Co., and L. P. Bayne, of the second part, Sidney W. Hopkins and Frank H. Collins, and Robert J. Carpenter, lately composing the firm of S. W. Hopkins & Co., of the third part, Francis H. Flagg, and Converse L. Chase, trustees under deed of trust executed by the parties of the first part, to them, bearing date the second day of October, 1871, D. G. Ambler, named in said trust deed, having declined to act as trustee, of the fourth part, and Henry J. Rogers of the fifth part.

Whereas, divers disagreements and differences have for a long time existed between the said railroad company and the said S. W.
44 Hopkins & Co., in reference to the accounts existing between them, each party claiming a large balance from the others, and disputing the items and claims made or set up by the other, and said S. W. Hopkins & Co., among other things, claiming a lien for a large amount on the $1,200 Florida bonds hereinafter mentioned; and divers litigations are pending in New York, Brooklyn, and in England, in respect to the said disagreements and differences, and the said railroad company and the said S. W. Hopkins & Co., have come to a final settlement and adjustment in the premises, as is hereinafter contained.

Now this agreement witnesseth, that the said parties of the third part, S. W. Hopkins & Co., in consideration of the premises and of one dollar to them paid by the said railroad company, the receipt whereof is hereby acknowledged, hereby relinquish and release to the said railroad company all and singular the liens, claims and demands of the said parties of the third part, S. W. Hopkins & Co., on or upon said 1,200 bonds of the State of Florida, being 8 per cent. bonds for $1,000 each, and now being a subject of controversy between John Collinson and the said railroad company and others, subject, however, to the injunctions in the suits of said Collinson, and in the suit of the Western Division of the Western North Carolina Railroad Company, except as to 190 of said bonds, and also subject to such trusts, if any, as may have been heretofore imposed on 1,000 of the said bonds by the said Jacksonville, Pensacola and Mobile Railroad Company, or by the resolutions of the stockholders and directors of the Florida
45 Central Railroad Company of Florida, and also release and forever discharge the said railroad company from all indebtedness, claims, demands, causes of action and controversies which they have against the said railroad company, and also in consideration aforesaid have simultaneously herewith executed an assignment to Milton S. Littlefield, or order, of certain rights, stock, mortgage bonds, etc., in the hands of D. M. Papy, as per his written acknowledgement, of which, and of said assignment endorsed thereon a copy is hereto annexed marked "A," and have delivered said acknowledgement and assignment to the said Henry J. Rogers, and have also, simultaneously herewith, assigned and set over to the said Littlefield the certificates of

thirty shares of stock, mentioned in Schedule B, hereto annexed, which assignment and transfer and certificate have been delivered to the said Rogers.

And the said parties of the first part, the said Railroad Company, in consideration of the premises, and of the foregoing, and of one dollar to them paid by the said parties of the third part, the receipt whereof is hereby acknowledged, hereby release and forever discharge the said parties of the third part from all indebtedness, claims, demands, controversies and causes of action which they have against them, the parties of the third part, or either of them.

And the said parties of the fourth part, the said trustees, in consideration of the premises, and of one dollar to them paid by the said parties of the third part, the receipt whereof is hereby acknowledged, hereby release and forever discharge them, the parties of the third part, from all indebtedness, claims, demands, controversies and causes of action, which the said trustees have against them, the parties of the third part, or against either of them.

And whereas, divers disagreements and differences have, for a long time existed between the parties of the first part and
46 the said L. P. Bayne, in reference to his accounts against the said Railroad Company, he claiming that the said Railroad Company are indebted to him in the sum of $200,000, and interest; and also that he, the said L. P. Bayne, has a lien on the said 1,200 bonds to the full extent of the amount of his said claim, namely: $200,000, and interest, the said Company disputing a portion of the said claim, and divers litigations are pending in respect to the same, and the parties of the first part, and the said L. P. Bayne, have come to a final settlement and adjustment whereby his said claim is hereby adjusted and settled at the sum of $150,000 and interest from this date, and his said lien to that amount admiited.

Now this agreement further witnesseth, that the parties of the first part, the said Railroad Company, in consideration of the premises, and the sum of one dollar, to them paid by the parties of the second part, the receipt whereof is hereby acknowledged, hereby admit and adjust the said claim of the said L. P. Bayne at the said sum of $150,000 and interest, and agree that the said L. P Bayne has and shall have a lien upon the said 1,200 bonds for the amount of said claim of $150,000 and interest from this date.

And the parties of the second part, in consideration of the premises, and the sum of one dollar to them paid by the parties of the third part release and discharge them, said parties of the third part,
47 and each of them, of and from all claims, demands and causes of action which they, the parties of the second part or either of them, have against the parties of the third part or either of them. Provided, however, that one hundred and ninety of the said Florida bonds, or in case there shall not be so many subject to the order hereinafter mentioned, then no less than one hundred and eighty-eight of said bonds shall be delivered to Converse L. Chase, or his order, within two months from the date hereof, in pursuance of an order for that

purpose now delivered by L. Lewis Spring to said Chase or otherwise; but in case any arrangement shall be made, with the concurrence of the said Bayne, within two months from this date, with the said John Collinson, by the said Jacksonville, Pensacola and Mobile Railroad Company, or by said trustees or on behalf of either of them or by any other person, whereby the said twelve hundred bonds, or any large portion thereof not less than five hundred, shall be delivered to the said John Collinson, or sold under some arrangement hereafter made with the said Collinson, with the concurrence of the said Bayne, when the above condition of said release shall be deemed complied with, and the said release shall thereupon become operative, but in case no such arrangement shall be made, or in case the said bonds shall not be delivered under the said order within the said time limited, then he is to return said order to the said Spring, and the release of L. P. Bayne & Co. and L. P. Bayne, will not take effect or become operative.

And the said parties of the first part, however, expressly agreeing with the said parties of the second part, respectively, that the
48 above release to S. W. Hopkins & Co., when it shall take effect, shall in no way affect or impair the rights, claims and causes of action of the parties of the second part, respectively, against the said Railroad Company, but that the same shall remain unimpaired, with the like effect as if such release had not been given.

In witness whereof, the parties hereto have hereunto set their hands and seals, the day and year first above written.

JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY. [SEAL.]
By CONVERSE L. CHASE, *Attorney.* [SEAL.]
F. H. FLAGG. [SEAL.]
By C. L. CHASE. [SEAL.]
CONVERSE L. CHASE, *Trustees.* [SEAL.]
L. P. BAYNE & CO. [SEAL.]
L. P. BAYNE. [SEAL.]
S. W. HOPKINS. [SEAL.]
FRANK H. COLLINS. [SEAL.]
By CHAS. H. COLLINS, *Attorney.* [SEAL.]
R. J. CARPENTER. [SEAL.]
HENRY J. ROGERS. [SEAL.]

49 Sealed and delivered in the presence of, the words "of which a copy is" interlined on first page; thirty-seven words interlined on third page "declared" stricken out, and "delivered" interlined, and the words "and certificate" interlined on fourth page before execution; also, seven words on seventh page and twelve words on eighth page interlined before execution; also, the words "Converse L. Chase" and "Chase" interlined, and the words "the said Bayne" and "Bayne" stricken out on the seventh page, and the words "to the said L. P. Bayne" stricken out, and the words "under the said order" interlined on eighth page before execution.

JOHN J. LYNE.

EXHIBIT C.

SCHEDULE "A" REFERRED TO IN THE FOREGOING AGREEMENT.

I acknowledge to have deposited with me, by virtue of an agreement between Edward Houstoun and S. W. Hopkins & Co., certificates of stock in the Florida Central Railroad Company in the aggregate calling for four thousand three hundred and seventy shares, and which certificates are numbered 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 57, 58, 59, 79 and 80; also, one hundred and three thousand dollars of the first mortgage bonds of the Pensacola and Georgia Railroad Company, and of the Tallahassee Railroad Company, which, by said agreement, are not to be delivered by me unless directed to do so by M. S. Littlefield and S. W. Hopkins, jointly, or unless directed to be delivered to M. S. Littlefield by said S. W. Hopkins, or directed to be delivered to S. W. Hopkins by M. S. Littlefield, and unless, in
50 addition thereto, the suit instituted in New York against said Edward Houstoun and others by the Western Division of the Western North Carolina Railroad Company, and the suits brought against said Houstoun by T. L. Clingman in Pennsylvania and New Jersey, and by Rogers & Bayne and L. P. Bayne in New York, shall have been dismissed.

I also acknowledge to have deposited with me, by virtue of the agreement aforesaid, four drafts of Geo. W. Swepson on M. S. Littlefield, accepted by said Littlefield, amounting in the aggregate to the sum of one hundred and nine thousand one hundred and forty dollars, exclusive of interest thereon, and which are not to be delivered to said M. S. Littlefield unless and until directed to do so by said S. W. Hopkins.

May 19, 1871.

(Signed) M. D. PAPY.

We, Sidney W. Hopkins, Frank H. Collins and Robert J. Carpenter, co-partners composing the late firm of S. W. Hopkins & Co., mentioned in the foregoing acknowledgement or agreement, in consideration of one dollar, and other considerations, to us paid by Milton S. Littlefield, therein mentioned, the receipt whereof is hereby acknowledged, hereby assign, release and set over to the said Milton S. Littlefield, all and singular, the rights, title and interests which we acquired under and by virtue of the said acknowledgement or agreement, and under and in virtue of the agreement therein mentioned, between Edward Houstoun and S. W. Hopkins & Co.,
51 of in and to the four thousand, three hundred and seventy shares of the stock of the Florida Central Railroad Company, and of, in and to the certificates hereof; and also in and to the one hundred and three thousand dollars of the first mortgage bonds, also mentioned in the said acknowledgement and agreements; and we do hereby direct M. D. Papy to deliver all of the said certificates of stock and all of the said mortgage bonds to the said Littlefield or order, upon the discontinuance and dismissal of the suits mentioned in the said acknowledgement. And the said Sidney W. Hopkins hereby, in consideration aforesaid, directs the said Papy to deliver to the said Littlefield or order, the four drafts, amounting

in the aggregate to one hundred and nine thousand and one hundred and forty dollars, mentioned in the said acknowledgement.

In witness whereof, we have hereunto set our hands and seals, this 14th day of June, 1872.

Sealed and delivered in the presence of

S. W. HOPKINS & CO., [SEAL.]
S. W. HOPKINS, [SEAL.]
FRANK H. COLLINS, [SEAL.]
By CHAS. W. COLLINS, [SEAL.]
Attorney.
R. J. CARPENTER, [SEAL.]

SCHEDULE "B," REFERRED TO IN THE FOREGOING AGREEMENT.

We, S. W. Hopkins & Co., in consideration of the sum of
52 one dollar, to us paid by M. S. Littlefield, the receipt whereof is hereby acknowledged, hereby assign to him the three annexed certificates, numbered 18, 19 and 20, for ten shares each of the capital stock of the Jacksonville, Pensacola and Mobile Railroad Company, one in the name of S. W. Hopkins, with power of attorney thereon in blank, executed by him; another in the name of Charles H. Collins, with power of attorney thereon in blank, executed by the said Collins, and the other in the name of Edward A. Hopkins, with power of attorney thereon in blank, executed by the said Edward A. Hopkins.

This assignment being made as part and parcel of an agreement between the said Railroad Company, of the first part, L. P. Bayne & Co. and L. P. Bayne, of the second part, Sidney W. Hopkins, Frank H. Collins and Robert J. Carpenter, of the third part, Francis H. Flagg and Converse L. Chase, trustees, of the fourth part, and Henry J. Rogers, of the fifth part, to which agreement reference is hereby made, bearing even date herewith.

Dated New York, June 17th, 1872.

S. W. HOPKINS & CO.
S. W. HOPKINS.
FRANK H. COLLINS,
53 *By* CHAS. W. COLLINS, *Attorney.*
R. J. CARPENTER.

UNITED STATES OF AMERICA,
State of Florida, Duval County.

Be it remembered, that at a meeting of the directors of the Jacksonville, Pensacola and Mobile Railroad Company, held in pursuance to a call duly made therefor, at their office in the City of Jacksonville, in the said State of Florida, on the twelfth day of April, A. D. one thousand eight hundred and seventy-two, there was adopted the following resolutions which had been previously adopted by a majority vote of all of the capital stock of the stockholders of the said Jacksonville, Pensacola and Mobile Railroad Company, a resolution of said stockholders in the words and figures following, *i. e.*:

"*Resolved*, by the stockholders of the Jacksonville, Pensacola and Mobile Railroad Company, that the president of the said Company be and he is hereby authorized and directed to cause

to be made, executed and delivered to Converse L. Chase, Esq., a power of attorney, constituting him, the said Converse L. Chase, the attorney in fact of the said Jacksonville, Pensacola and Mobile Railroad Company, with full power and authority to proceed to the City of New York, in the State of New York, or wherever else may be necessary for the purpose and for and on account of the said Jacksonville, Pensacola and Mobile Railroad Company to consider any propositions for settlement and adjustment of any and all disagreements and differences between the said Jacksonville, Pensacola and Mobile Railroad Company and all parties, persons and corporations or associations and particularly with the firm of S. W. Hopkins
54 & Co. of New York and London, and in his discretion for and in the name of the said Jacksonville, Pensacola and Moblie Railroad Company, to reject or accept any and every or either such settlements or adjustments, with power to alter or modify the same for and on account of the said Company, which said power of attorney shall be duly attested under the corporate seal of the Company, and certified by the secretary thereof.

"*Resolved, further*, That we do hereby ratify and approve all that our said attorney shall lawfully do by virtue hereof."

Now, therefore, know all men by these presents, that under and by virtue of the foregoing resolutions of the stockholders thereof, the said the Jacksonville, Pensacola and Mobile Railroad Company does hereby constitute and appoint the said Converse L. Chase attorney of the said the Jacksonville, Pensacola and Mobile Railroad Company, for it and in its name, place and stead, to settle and adjust all and any the difference and disagreements of the said the company aforesaid, with all and every person, parties, corporations or associations, and particularly with S. W. Hopkins & Co., of New York and London, and generally to do and exercise all and singular the power and authority contemplated in the foregoing resolutions; hereby ratifying and allowing all that our said attorney shall lawfully do by virtue hereof.

55 In witness whereof, the said the President of the said the Jacksonville, Pensacola and Mobile Railroad Company and the said F. H. Flagg, the Secretary thereof, have hereto attached their names and affixed the corporate seal of the said company. Done at Jacksonville, Florida, this the 13th day of April, A. D. 1872.

CORPORATE SEAL.

50C. U. S. IN. REV. STAMP CAN.

M. S. LITTLEFIELD,
Pres't J., P. and Mobile R. R. Co.

F. H. FLAGG, *Secretary.*
Attest: AUGUSTUS SHERMAN.

STATE OF FLORIDA, } *ss.:*
Duval County. }

I, Augustus Sherman, a commissioner of the State of New York, residing in the city of Jacksonville, Duval county, and State of Florida, do certify that on the thirteenth day of April, in the year one thousand eight hundred and seventy-two, personally appeared before me, in the

city of Jacksonville, Duval county, aforesaid, Milton S. Littlefield, who is personally known to me to be the individual described in and who has executed the foregoing instrument as the President of the Jacksonville, Pensacola and Mobile Railroad Company, and he then and there acknowledged to me that he executed the said instrument
56 as such president of said company, and I do further certify that I know said Milton S. Littlefield to be president of said railroad company.

SEAL OF COMMISSIONER.

In witness whereof, I have hereunto set my hand and official seal, at the City of Jacksonville, in the County and State aforesaid, this 13th day of April, one thousand eight hundred and seventy-two.

AUGUST SHERMAN,
A Commissioner for the State of New York.

In consideration of one dollar, to me in hand paid by L. P. Bayne and by L. P. Bayne & Co., I agree that Henry J. Rogers shall hold in trust for said parties the written instruments annexed hereto, to-wit: the receipt of M. D. Papy and the transfer of S. W. Hopkins & Co.; said writings and all the stocks, securities, rights, equities and powers specified and provided for therein, shall be and hereby are vested in the said Rogers, to secure payment to L. P. Bayne and to L. P. Bayne & Co., of the amount of all their claims against M. S. Littlefield and the Jacksonvtlle, Pensacola and Mobile Railroad Company, as this day adjusted.

And the said Rogers is hereby authorized, in furtherance of said purposes, to demand possession from said Papy of all the stock and securities referred to in said Papy's receipt. In accordance
57 with the terms of said receipt and in compliance with said terms, said Papy shall surrender said stock and security to said Rogers.

Said stock and securities and said receipt of said Papy shall not be delivered over to said Littlefield or his order until the terms of this instrument shall have been complied without.

Witness my hand and seal at New York, this 18th day of June, 1872.

M. S. LITTLEFIELD.
Per CONVERSE L. CHASE,
Attorney in fact.

Attest: CHAS. A. HOUGH.
Sworn to before me this 21st day of May, 1873.
JOHN B. RANDOLPH,
Notary Public 100,
New York County.

EXHIBIT D.

58 At a special term of the Supreme Court of the State of New York, held at the Court House, in the City and County of New York, on the 18th day of January, 1873.

Present—HON. JOHN C. BARRETT, Justice.

JOHN COLLINSON, *Plaintiff.*
vs.
SIDNEY W. HOPKINS, ROBERT J. CARPENTER AND FRANK H. COLLINS, composing the firm of S. W. Hopkins & Co., the Jacksonville, Pensacola and Mobile Railroad Company, the Western Division of the Western North Carolina Railroad Company, Samuel D. Babcock, Joseph Stuart, D. G. Ambler, Francis H. Flagg, Converse L. Chase and Lawrence P. Bayne, *Defendants.*

Whereas, an order was duly entered on the 6th day of December 1872, in the above entitled action by counsel of all parties who appared therein, to which order reference is hereby made.

59 And whereas, in and by the said order it was provided that John Collinson, plaintiff, shall deposit the surplus monies resulting from the sale of the bonds mentioned in the said order in the National Trust Company, in the City of New York, to be held and disposed of subject to the further order of this Court, to be made in this action on notice to the attorneys for all the parties who appeared therein, and to John L. Requa, in the action secondly mentioned in the said order, and the said proceeds so deposited stand in place of the said bonds themselves, subject to the same rights and leins, if any, on the part of either or any of the parties in either of said actions now existing against said bonds.

And whereas, by another order, duly entered in this action on the 27th day of December, 1872, it was further ordered that the said order, bearing date the 6th day of December, 1872, directing a delivery to the plaintiff, by the receiver, of the bonds therein mentioned be, and the same was, thereby modified by substituting the New York State Loan and Trust Company as the depositary of the surplus proceeds of the bonds to be sold in place of the National Trust Company in the City of New York mentioned in said order.

And whereas, it is admitted by the parties who consent to the entry of this order, that in and by a certain agreement bearing date the 17th day of June, 1872, between the said Jacksonville, Pensacola and Mobile Railroad Company, of the first part, L. P. Bayne & Co. and L. P. Bayne, of the second part, Sidney W. Hopkins and others, of the third part, Francis H. Flagg and Converse L. Chase, trustees, etc., of the fourth part, and Henry J. Rogers, of the fifth part, it was, among

60 other things, agreed that the claim of the said Lawrence P. Bayne against the said Jacksonville, Pensacola and Mobile Railroad Company was thereby admitted and adjusted at the sum of one hundred and fifty thousand dollars and interest, and that the said Lawrence P. Bayne had, and shall have, a lien upon the said twelve hundred eight per cent. Florida bonds mentioned in the pleadings in this action for the amount of his said claim of one hundred and fifty thousand dollars and interest from the said 17th day of June, 1872.

And whereas, it is in like manner admitted by the said parties that there is now due and owing to the said Lawrence P. Bayne, on his said claim, and on his said lien on the said bonds, the sum of ninety-six thousand six hundred and fifty dollars, paper currency of the

United States, with interest thereon from the said 29th day of August, 1872.

And whereas, it is in like manner admitted by the said parties that Thomas B. Coddington had, on the said 29th day of August, 1872, a claim and lien to the amount of forty thousand dollars, and interest from the 20th day of August, 1873, in one thousand of the twelve hundred bonds so delivered to the said John Collinson upon the footing of the said agreement with him; and the said decree of the said Court of Chancery, and such lien of said Thomas B. Coddington attached, and still attaches, to the proceeds, or so much thereof as may be necessary, of the said one thousand bonds; and he is entitled to be paid out of such proceeds said sum of forty thousand dollars, United States currency, and interest, as aforesaid.

61 And whereas, it is in like manner admitted by the said parties that by the said trust deed or indenture, duly made in the State of Florida, between the said Jacksonville, Pensacola and Mobile Railroad Company, of the first part, and Francis H. Flagg, D. G. Ambler and Converse L. Chase, of the second part, and bearing date the 2d day of October, 1871; the said parties thereto of the first part transferred and assigned to the said parties thereto of the second part, among other things, the proceeds of all the said 8 per cent. Florida bonds, and to be applied as provided for in the said indenture or trust deed, as will more fully appear by reference to the same.

And whereas, it is in like manner admitted by the said parties that the said Chase and the said Flagg alone accepted the trust reposed in them under and in virtue of said indenture or trust deed, and the other trustee therein named, D. G. Ambler, disclaimed and declined to accept the said trust, and the same devolved wholly on the said Flagg and the said Chase; and whereas, the said Francis A. Flagg recently died, leaving the said Converse L. Chase sole surviving trustee under and in virtue of the said indenture or trust deed, and he, the said Flagg, during the lifetime of the said Flagg, were entitled, and the said Chase, ever since the death of the said Flagg, has been entitled, as such trustee, to all the proceeds of said twelve hundred bonds, subject, nevertheless, to the aforesaid lien of the said Lawrence P. Bayne for the said balance due him, as aforesaid, and subject to the said lien of the said Thomas B. Coddington, as aforesaid.

62 And whereas, by an order or decree heretofore entered in this action on the 27th day of December, 1872, it was ordered, adjudged and decreed, as between all the parties who consented to the entry of said decree, that two hundred thousand dollars to be paid to the defendants, the Western North Carolina Railroad Company, out of the first proceeds of said bonds, to be paid to the said trust company, after first providing for the payment of the balance of the receiver's fees in this action, adjusted at the sum of nine thousand dollars.

Now, therefore, in consideration of the premises, and on the consent and stipulation of Horace Barnard, Esq., attorney for the defendants, the Jacksonville, Pensacola and Mobile Railroad Company, and Converse L. Chase, survivining trustee, as aforesaid, and of Algernon S. Sullivan, Esq., attorney for the defendants, the Western Division of

the Western North Carolina Railroad Company, and for the defendant, Lawrence P. Bayne, it is ordered as between all of the said parties consenting and stipulating, as aforesaid, that the said Thomas B. Coddington had, and still has, a lien on the proceeds of the said one thousand bonds for the said sum of forty thousand dollars, paper currency of the United States, with interest, as aforesaid, subject, nevertheless, to the payment of the balance of the said receiver's fees, adjusted as aforesaid, and also subject to the payment, in the first place, of the said sum of two hundred thousand dollars to the said Western Division of the Western North Carolina Railroad Company. And it is further ordered that, as between all of the said parties consenting and stipulating, as aforesaid, that the said Lawrence P. Bayne had, and
63 still has, a lien on the said twelve hundred bonds and proceeds to the amount of the said balance of ninety-six thousand six hundred and fifty dollars and interest, as aforesaid, subject, nevertheless, to the payment of the said balance of the said receiver's fees, adjusted as aforesaid, and to the payment, as hereinbefore mentioned, to the said Western Division of the Western North Carolina Railway Company; and it is further ordered, that, as between all the said parties consenting and stipulating as aforesaid, the said Converse L. Chase, as such surviving trustee, is the owner of and entitled to receive all of the residue of the said proceeds. And it is further ordered that this order is made without prejudice to the rights of any party to this action who has not expressly consented, in writing, to the entry thereof, and also without prejudice to the rights of John L. Requa, the plaintiff in the action secondly mentioned in the order of the 6th of December, above referred to.

A copy. CHAS. E. LOEW, *Clerk.*

[Endorsed:] Filed January 18, 1873.

64 We consent to, and stipulate for, the entry of the above order. Dated New York, January 18th, 1873.

(Signed) HORACE BARNARD,
Attorney for J., P. and M. R. R. Co.,
and C. L. CHASE, Sur. Trustee.
ALGERNON S. SULLIVAN,
Attorney for Western Division of the
W. N. C. R. R. Co.,
and for Lawrence P. Bayne.

65 In the Circuit Court of the United States for the Northern District of Florida.

On Bill in Equity.

E. C. ANDERSON,
vs.
MARCELLUS L. STEARNS, Governor, *et al.*

The accompanying petition of Henry J. Rogers, with the exhibits thereto annexed, and the affidavit of Joseph B. Stewart being presented and read to the Honorable Joseph P. Bradley, presiding Justice of the above Court, at his chambers in the City of Washington, on this 25th day of November, 1875, and duly considered by said Justice.

It is ordered, that the complainants in the above stated cause do show cause to the said Court, on the 6th day of December next, why the prayer of said petition should not be granted. And it is ordered, that said petition, exhibits and affidavit be filed, and that a copy thereof, together with a copy of this order, be served on the complainants or their solicitors, within seven days from the date hereof; and that the proceedings before the Master be continued until the matter can be heard.

JOSEPH P. BRADLEY,
Associate Justice Supreme Court United States and presiding Justice as aforesaid.

[Endorsed:] In the United States Circuit Court, Northern District of Florida. E. C. Anderson vs. Marcellus L. Stearns, Governor, *et al.* Petition of H. J. Rogers, with Exhibits, and praying leave to appear and file cross-bill, take proof, etc. Order of Hon. J. P. Bradley to show cause, etc. Filed December 2d, 1875. Philip Walter, Clerk.

66 In the Circuit Court of the United States for the Northern District of Florida.

E. C. ANDERSON,
vs.
MARCELLUS L. STEARNS, Governor, *et al.*

UNITED STATES OF AMERICA, }
District of Columbia. }

Thomas L. Clingman, being duly sworn, says that he only a few days since heard of, and has this day for the first time seen and read the order made or allowed by his honor, Judge Bradley, making this affiant a party defendant to, not in any manner interested in the above entitled cause, no copy of said order ever having been served on him personally or otherwise, or notice thereof given.

Affiant has seen a paper signed by one A. Doggett, which did not refer to him as a party to the suit, but which seemed to be an advertisement to any one who might choose to assert a claim.

As affiant has had a suit pending in a court of competent jurisdiction for more than five years, and has long been ready to try the same, he did not see any reason why he should go before a court in Florida and voluntarily ask to be allowed to become a party.

That perceiving that said order is a consent order provided by the parties present in court on the 18th day of May, 1875, and pro-
67 poses to effect the interests of this affiant, who was not present or assenting thereto, he seriously objects thereto, because so far as his rights are involved the $103,000 bonds of said Pensacola and Georgia Railroad Company were by this affiant attached in the hands of the late Edward Houstoun, in the city of Philadelphia, where affiant has a suit now pending before a court of competent jurisdiction where the cause is at issue, and his testimony all taken and ready for trial when the case can be reached, all of which affiant is advised, and fully believes, was well known to the parties or their counsel procuring said order of the 18th of May, 1875, involving affiant's interest in this suit.

Affiant states that he has a just and legal interest in and claim upon said $103,000 bonds for the payment to him of the sum of about $35,000, including principal, interest and costs, and is now ready to try his cause before the court in Philadelphia, as aforesaid, but if required so to do, will appear to and file his answer in this cause, when the complainants shall, by proper amendments to their bill, make such suitable averments as shall put his rights in issue, and not ousting the jurisdiction of the court where the same is now pending.

T. L. CLINGMAN,

Sworn and subscribed to before me this 1st day of December, A. D. 1875.

[SEAL.]

J. M. YZNAGO,
U. S. Commissioner.

[Endorsed:] Filed December 7, 1875.

PHILIP WALTER, *Clerk.*

68

DECREE.

In the Circuit Court, Duval County. In Chancery.

THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND AND THE STATE of Florida.

vs.

THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY, THE Florida Central Railroad Company, Milton S. Littlefield, et al.

This cause commenced on the 20th day of March, A. D. 1872, came on to be further heard this seventeenth day of August, A. D. 1875, between the complainants and the defendants, The Jacksonville, Pensacola and Mobile Railroad Company, and Milton S. Littlefield, *et al.*, upon the amended and supplemented complaints, the answer and the amended answer of the defendant, The Jacksonville, Pensacola and Mobile Railroad Company, and exhibits and testimony taken before the referee appointed herein, and was argued by counsel; on consideration whereof the Court doth adjudge, decree and declare that the bonds of the late The Pensacola and Georgia Railroad Company, numbered six (6), thirty-six (36) to fifty-six (56), inclusive, two hundred and sixty-two, (262), sixty-nine, (69), seventy (70), seventy-four (74), seventy-eight (78), seventy-nine (79), eighty (80), eighty-two (82), eighty-three (83), eighty-five (85), eighty-six (86), eighty-seven (87), eighty-eight (88), eighty-nine (89), ninety (90), ninety-one (91), ninety-two (92), one hundred and one (101), one hundred and five (105), one hundred and six (106,) one hundred and seven (107), one hundred and eight (108), one hundred and thirty-four (134),

69 one hundred and thirty-five (145), one hundred and thirty-six (136), one hundred and thirty-seven (137), one hundred and thirty-eight (138), one hundred and forty-four (144), one hundred and forty five (145), two hundred and fifty-eight (258), two hundred and fifty-nine (259), two hundred and sixty (260), two hundred and sixty-one (261), two hundred and sixty-three (263), two hundred and sixty-four (264), two hnndred and sixty-five (265), one hundred and eighty-two (182), three huudred and thirteen (313),

thirty-four (34), two hundred and sixty-six (266), one hundred and eighty-three (183), three hundred and twelve (312), two hundred and eighty-one (281), one hundred and eighty-four (184), three hundred and fourteen (314), seventy-five (75), one hundred and eighty-five (185), three hundred and fifteen (315), eighty-two (82), one hundred and eighty-six (186), three hundred and sixteen (316), eighty-three (83), one hundred and eighty-seven (187), three hundred and seventeen (317), eighty-four (84), one hundred and eighty-eight (188), three hundred and eighteen (318), one hundred and seventy-one (171), one hundred and eighty-nine (189), three hundred and nineteen (319), one hundred and seventy-two (172), one hundred and ninety (190), three hundred and twenty (320), one hundred and seventy-three (173), one hundred and ninety-one (191), three hundred and twenty-one (321), one hundred and seventy-four (174), one hundred and ninety-two (192), three hundred and forty-three (343), one hundred and ninety-three (193), three hundred and sixty-three (363), one hundred and seventy-six (176), one hundred and ninety-four (194), three hundred and sixty-four (364). Each of the foregoing bonds is for one
70 thousand dollars ($1,000), except bond number thirty-four (34), which is for five hundred dollars ($500).

The bonds of the Tallahassee Railroad Company, numbered as follows: Numbered from number two (2) to twenty (20) inclusive, and bond fifty-one (51), each for one hundred dollars ($100), and bonds fifty-six (56), eighty-nine (89), ninety (90), two hundred and twelve (212), two hundred and forty-five (245), two hundred and fifty-four (254), two hundred and fifty-three (253), two hundred and fifty-five (255), two hundred and fifty-six (256), each for ($500) five hundred dollars. All of the bonds of the Pensacola and Georgia Railroad Company above enumerated, from under one hundred and seventy-one (171) to number one hundred and seventy-six (176), inclusive, and from number one hundred and eighty-two (182) to number one hundred and ninety-four (194), inclusive, have coupons attached running from July the first, A. D. 1869; but the rest of the above enumerated bonds of the Pensacola and Georgia Railroad have coupons attached running from July first, A. D. 1870. The bonds of the Tallahassee Railroad Company have coupons attached running from the first day of July, A. D. 1870, and the coupons attached thereto, as well as the coupons which have matured since March 20, 1869, are the property of the plaintiffs, the Trustees of the Internal Improvement Fund of Florida and their successors in office, and that the said defendant, the Jacksonville, Pensacola and Mobile Railroad Company, have no title or interest in, to, or of the said bonds, or any of them, as against the plaintiffs
71 aforesaid. And it further appearing that said bonds were purchased and acquired by the said defendant company and the defendant, Milton S. Littlefield, under an agreement, them and the plaintiffs, for a valuable consideration, that they should be delivered to the plaintiffs, the trustees aforesaid, for cancellation, it is further adjudged and decreed that said plaintiffs, the trustees aforesaid, upon recovering the possession of said bonds, do proceed without delay, after making a proper record thereof, to cancel them, and that the

amount thereof be credited upon the decree in this cause of April 2d, 1874.

And it further appearing the defendant, Milton S. Littlefield, has been duly served with process in this action, and has not interposed any defense thereto, and that the defendant, Daniel P. Holland, does not by his answer herein set up any claim, right, title or interest in, to, or of the aforesaid bonds, it is further ordered, adjudged, and decreed that said defendants, Milton S. Littlefield, Daniel P. Holland, and the Jacksonville, Pensacola, and Mobile Railroad Company, be and they and each of them, and all persons claiming by, through, or under them, or either of them, are hereby perpetually enjoined and restrained from asserting or claiming any, right, title, or interest whatsoever in, to, or of the said bonds, or any of them, or any of said coupons, in any court or place, as against the plaintiffs in this action. And it further appearing from the answers of defendant Mariano D. Papy, that since the commencement of this action the said bonds have been
72 taken from the possession and control of the said Papy, in violation and disregard of the injunctional order of this Court restraining the said Papy from disposing of or parting with the possession of said bonds, and have been delivered to and deposited with Aristides Doggett, Esq., a master in chancery, in a suit in equity in the Circuit Court of the United States for the Northern District of Florida, in the name of T. Mayhew Cunningham, trustee, and that said defendant Papy held said bonds as a naked bailee, or trustee, and did not claim any title or interest in the same; it is further ordered and decreed, that the said plaintiffs, the Trustees of the Internal Improvement fund aforesaid, be, and they are hereby, vested with all the right, title and interest in said bonds, which were acquired by the said defendants, The Jacksonville, Pensacola and Mobile Railroad Company and Milton S. Littlefield, from Edward Houstoun, under the purchase thereof, from him, or other person, and with all the rights of said defendants to sue for, demand and recover the possession of said bonds, as fully and effectually as said defendants, or either of them, could heretofore have done. It is further ordered, adjudged, and decreed that the State of Florida is the owner and holder, for a valuable consideration of three thousand coupon-bonds issued by the defendants, The Jacksonville, Pensacola and Mobile Railroad Company, of the denominations of one thousand dollars each, numbered from one to three thousand inclusive, bearing eight per cent. interest, payable semi-annually, dated
73 January first, A. D. one thousand eight hundred and seventy, and payable on the first day of January, A. D. nineteen hundred. And it is further ordered, adjudged and decreed that the plaintiff, the State of Florida, to secure the payment of the said bonds, and the interest accrued and accruing thereon, has a statutary lien, valid in law and equity, from the date of said bonds, upon all the property of the Jacksonville, Pensacola and Mobile Railroad Company, which it owned at the date of issue of said bonds, or has since acquired, and upon all its corporate franchises, and upon the road-bed, iron, rolling stock equipments, depots, workshops, wharves, buildings and all its property, real and personal, upon, connected with, or appurtenant to

the line of road extending from Lake City, County of Columbia, to the Chattahooche River, and from Tallahassee, Florida, to St. Marks, Florida, and from Monticello Junction to Monticello in Jefferson County. It further appearing that the plaintiff, the State of Florida, is the holder of coupons, detached from each of said bonds, numbered from three (3) to (11) inclusive, and coupon number (2), from bond number two thousand and thirty-four (2,034), amounting at the par value thereof to the sum of one million eighty thousand and forty dollars ($1,08c,040,) and it appearing that said Company has in its possession, and in the possession of its agents, Messrs. Duncan, Sherman and Company, of New York City, coupons of the eight per cent. bonds of the State of Florida, of like date of issue and of maturity,
and of like denomination as said company's bonds, numbered
74 from three to six inclusive, amounting at the par value thereof
to the sum of four hundred and eighty thousand dollars, which, under the pleadings in this action, appears to be a just set-off to the plaintiffs' demand for interest due on said bonds of said Company, leaving a balance due the plaintiffs on account of interest the sum of six hundred thousand and forty dollars. It is further ordered, adjudged and decreed, that the plaintiff, the State of Florida, do have and receive of and from the said defendant, The Jacksonville, Pensacola and Mobile Railroad Company, the full sum of six hundred thousand and forty dollars on account of interest due as aforesaid and
dollars cost to be taxed by the Clerk of this Court. And it is further adjudged and decreed that the said The Jacksonville, Pensacola and Mobile Railroad Company has made a default, and has failed to pay interest on said three thousand of its bonds for over twelve months after the same became due and payable under the provisions of section third of said act of January the twenty-eighth, A. D. 1870. It is further adjudged, that the purchase at any sale held, or made under, or to enforce said statutary lien held by the State of Florida as aforesaid, shall take the property acquired at such sale, subject to all existing rights or liens in favor of said board of trustees of the Internal Improvement Fund of Florida unless such rights and liens shall be
75 satisfied or paid out of the proceeds of said sale.

August 20th, 1885.

(Signed) R. B. ARCHIBALD,
Judge.

STATE OF FLORIDA, }
County of Duval. }

I, Edwin Higgins, Clerk of the Circuit Court aforesaid, hereby certify that the foregoing decree is a correct copy of the original on file in the proceedings in said cause in my office.

Witness my hand and the seal of said Court this 24th day of August, A. D. 1875.

[SEAL.] EDWIN HIGGINS, *Clerk.*

[Endorsed:] In the Circuit Court, Fourth Judicial Circuit. Exhibit H, Duval County, in Chancery. The Trustees of the Internal Improvement Fund and State of Florida *vs.* The Jacksonville, Pensa-

cola and Mobile Railroad Company, The Florida Central Railroad Company, M. S. Littlefield *et al.* Copy decree. Filed August 21st, 1875. Edward Higgins, clerk, by H. Jenkins, Jr., D. C.; H. Bisbee, Jr., comp't solicitor.

76 STATE OF FLORIDA, }
Leon County. }

This agreement made and entered into at the city of Tallahassee, in the County and State aforesaid, between Milton S. Littlefield, party of the first part, and Edward Houstoun, party of the second part, witnesseth: That, whereas the said Edward Houstoun owns and holds a certain draft, which is in the words and figures following, to-wit:

$163,026.70-100. TALLAHASSEE, May 13, 1870.

Sixty days after date pay to the order of Edward Houstoun one hundred and sixty-three thousand and twenty-six 70-100 dollars, value received, and charge the same to account of

M. S. LITTLEFIELD,
President J., P. & M. R. R. Co.

Acceptance waived.

For the payment of which said the said Edward Houstoun has and holds as security the following securities: 104 first mortgage bonds of the Pensacola and Georgia Railroad Company, and of the Tallahassee Railroad Company, amounting to $103,000 of said bonds; 1,300 shares of the capital stock of the Florida Central Railroad; four (4) drafts of George W. Swepson on M. S. Littlefield, accepted by said Littlefield; one draft for $26,520, due at six months; one draft for $27,030, due at nine
77 months; one draft for $27,540, due at twelve months; one draft for $28,050, due at fifteen months; all of said drafts being dated August 2, 1869, and amounting, in the aggregate, to the sum of $109,-140, exclusive of interest thereon; and whereas, the said draft of $163,026 70-100 was given to the said Houstoun for value received in the various transactions between the parties relative to the Jacksonsonville, Pensacola and Mobile Railroad Company and the Florida Central Railroad Company, growing out of the late Pensacola and Georgia Railroad Company and said Florida Central Railroad Company and the Tallahassee Railroad Company; and whereas, it is to the great interest of said parties of the first and second parts that moneys should be raised to promote the interests of said Florida Central Railroad Company to extend and provide for the business of said company and to pay said draft when due; and whereas, the said parties of the first and second parts are owners and proprietors of more than a majority of the capital stock of said Florida Central Railroad; therefore, know all men by these presents that the said parties of the first and second parts do hereby covenant and mutually agree, each with the other, that they do cause to be issued one million dollars on the first morgage bonds of the Florida Central Railroad Company of like denomination and effect and condition as the first mortgage bonds of the Jacksonville, Pensacola and Mobile Railroad Company, which said one million of dollars of said bonds are to be placed in the
78 hands of the said Edward Houstoun as additional security for

the payment of said draft for one hundred and sixty-three thousand and twenty-six dollars and seventy cents, to be held by the said Houstoun, in addition to the security aforesaid, for the faithful payment of said draft at maturity. And it is further agreed, that if the said draft is not paid at maturity, then and in that event the said Edward Houstoun is hereby authorized and fully empowered to cause said one million of dollars of the bonds of said Florida Central Railroad Company placed in his hands as security for said draft, as aforesaid, to be sold at public outcry in the city of New York, after default of payment of said draft, upon giving ten days' notice of said sale of said bonds, and of the time and place of said sale to Milton S. Littlefield, by mail, to his residence, at Tallahassee, Florida, and by giving like notice to Messrs. S. W. Hopkins & Co., No. 71 Broadway, New York city, by delivering said notice at their office, and by giving ten days' notice of said sale in the New York *Herald*, by advertisement, at which sale of said bonds the said Edward Houstoun may become the purchaser. And in the event of the sale being made, as aforesaid, the said Edward Houstoun, after first paying said draft and the expenses of said sale of bonds, shall pay over all the other moneys arising from said sale and all the securities now in the hands and heretofore set forth and enumerated to the said Milton S. Littlefield, and the said Houstoun shall only retain of or from said sale of bonds and
79 securities aforesaid sufficient to pay said draft and expenses of selling said bonds.

In witness whereof, the said parties have hereunto interchangeably set their hands and seals this 30th day of May, A. D. 1870.

(Signed) MILTON S. LITTLEFIELD.
(Signed) EDWARD HOUSTOUN.

The agreement made between Milton S. Littlefield and Edward Houstoun, dated 30th May, 1870, is hereby modified, changed and altered as follows, to-wit:

First. In lieu of one million dollars of first mortgage bonds of the Florida Central Railroad Company, which by said agreement were to be placed in the hands of said Houstoun, as security, for the payment of the draft in said agreement mentioned, the same amount of bonds of the State of Florida, to be exchanged for the said bonds of the Florida Central Railroad Company.

Second. If said draft be not paid at maturity the said Houstoun is authorized and empowered to sell said bonds of the State of Florida at public outcry, giving the notice of sale as provided for in said agreement, and said Houstoun may become a purchaser at said sale.

Third. After first paying said draft and expenses of sale, said Houstoun shall out of the balance of the proceeds arising from
80 the sale of said bonds, if sufficient for this purpose, pay to John P. Sanderson the sum of fifty-seven thousand five hundred and sixty dollars; to M. D. Papy, sixteen thousand dollars; to T. M. Brevard, attorney of certain holders of bonds of the Pensacola and Georgia Railroad Company—if certain negotiations now pending for their purchase be consummated—the sum of fifty thousand dollars; to John P. Sanderson, president of the Florida Central Railroad Com-

pany, three hundred and forty thousand dollars; after these payments the balance, if any, to be paid to said Littlefield.

Fourth. When said draft shall mature said Houstoun, instead of selling said bonds of the State, shall have the option and choice of returning the same to the State, and receiving in lieu thereof the one million dollars of first mortgage bonds of the Florida Central Railroad exchanged for the State bonds aforesaid.

Fifth. If, under the option and choice given the said Houstoun, he returns the bonds of the State of Florida aforesaid to said State and receives in lieu thereof the bonds of the Florida Central Railroad Company as aforesaid, provided said Houstoun, upon delivering said bonds of the Florida Central Railroad Company, receiving from the State as aforesaid, to the president of said Company, which said bonds shall be made payable to bearer, and shall be good, effectual and first lien on said road.

81 Sixth. Upon receiving said first mortgage bonds of the Florida Central Railroad Company from the president thereof, as above provided for, the said Houstoun shall hold the same as security for the payment of said draft, and is authorized and has the power at any time after giving thirty days' previous notice to the president of said company to sell the said bonds so received from the president of said company at public outcry, in the city of New York, at which said Houstoun may become a purchaser, and said Houstoun, after paying said draft and the expenses of said sale, dispose of and pay over the rest and residue of the proceeds of the sale of said bonds, if any, to the person named and for the amount named, as provided in the third clause hereof.

Seventh. If said Littlefield shall pay said draft at or before its maturity, said Houstoun shall deposit said bonds of the State of Florida, placed in his hands under the first clause hereof, with S. W. Hopkins & Company, No. 71 Broadway, New York, with the stipulation and agreement that they, the said Hopkins & Company, shall, in disposing of said bonds, hold the proceeds of said sale subject to the claims and for the amounts mentioned in the third clause hereof, to-wit: John P. Sanderson, the sum of fifty-seven thousand five hundred and sixty dollars; M. D. Papy, sixteen thousand dollars; T. M. Brevard, attorney for certain holders of Pensacola and Georgia Railroad

82 bonds, if negotiations now pending for their purchase shall be consummated, the sum of four thousand dollars; John P. Sanderson, president of the Florida Central Railroad Company, the sum of three hundred and forty thousand dollars; said Hopkins & Company, after first paying the amounts above named to the parties above named out of the proceeds of the sale of said bonds, shall pay the rest and residue, if any, of the proceeds of the sale of said bonds to said Littlefield.

Witness our hand and seal this, the seventh day of June, A. D. 1870, at Tallahassee, Florida.

(Signed) M. S. LITTLEFIELD. [L.S.]
(Signed) E. HOUSTOUN. [L.S.]

Signed, sealed and executed in our presence.

(Signed) CHAS. H. COLLINS,
(Signed) J. P. SANDERSON.

83 GENERAL RELEASE.

This is to certify to whom these presents may come, greeting: That I, Lawrence P. Bayne, for myself and for the firm of Lawrence P. Bayne & Co., of which I am the senior member, do hereby release and discharge, and forever quit-claim, any and all demands, claims and causes of action whatsoever, at law or in equity, against Edward Houstoun, deceased, late of Savannah, Georgia, or against the estate, executors or other legal representatives of the said Houstoun or his heirs at law; and especially do I release and discharge the said Houstoun, his estate and his said executors and heirs and legal representatives from any and all demand at law or in equity from and on account of a certain 4,370 shares of stock of the Florida Central Railroad Company, and a certain $103,000 of bonds of the Pensacola and Georgia Railroad Company, being the same stock and bonds described in a certain suit and proceeding by me, or in my name and behalf, in the Supreme Court or any other Court of the State of New York, and described in a certain suit on the part of said Edward Houstoun in the Superior Court of Chatham County, Georgia, to which I am a party, and in certain suits in the Circuit Court of the United States for the Northern District of Florida, to which I am also a party, and being the same stock and bonds described in a certain declaration of trust of said Houstoun to Mariano D. Papy, dated the 12th day of April, 1871, signed by Edward Houstoun and S. W. Hopkins; and the same stock and bonds also mentioned in a certain release and transfer to
84 Milton S. Littlefield, signed by S. W. Hopkins & Co., on the 14th day of June, 1872, and the same stock and bonds described in a certain acknowledgement of trust by said M. D. Papy on the 9th day of May, 1871, and the same stock and bonds described in a certain further assignment and transfer in trust by Milton S. Littlefield to Henry J. Rogers, as trustee, on the 18th day of June, 1872, and the subject of a decree in the said Circuit Court of the United States for the Northern District of Florida, sustaining said trust, dated December 2d, 1873, hereby releasing in full, in addition to the said Houstoun, his heirs, executors and estate, as aforesaid, Mariano D. Papy, his executrix, Fanny S. Papy and his estate and heirs at law from the further discharge of said trust, and for and on account of the said stock and bonds in any manner or for any cause whatsoever, and especially for and on account of the said suits and proceedings, or any of them, hereinbefore mentioned; this, my said release, being absolute and positive for all purposes, and in the event of any omission herein or further release being required. I hereby authorize my counsel, Joseph B. Stewart, to supply and execute the same in my name and behalf as fully and completely as I were personally present, and to affix my name and seal thereto, hereby fully affirming my said release and ratifying the acts of my said counsel in any further execution thereof that may be deemed meet and proper in the premises.

In testimony whereof, I have hereunto set my hand and seal this sixth day of January, 1877.

LAWRENCE P. BAYNF, [SEAL.]
and L. P. BAYNE & CO. [SEAL.]

Signed and sealed in presence of
GEO. C. LLOYD.

85 STATE OF NEW YORK, } ss.:
City and County of New York. }

On this sixth day of January, 1877, before me personally came Lawrence B. Bayne, to me known to be the person mentioned and described in and who executed the foregoing release and acknowledgment to me, that he executed the same individually and for the firm of L. P. Bayne & Co., for the uses and purposes therein mentioned.

GEO. C. LLOYD,
[SEAL.] *Notary Public, New York Co., N. Y.*

[Endorsed.] Lawrence P. Bayne and L. P. Bayne & Company. Copy. General Release. Filed April 30th, 1877. P. Walter, Clerk.

86 GENERAL RELEASE.

This is to certify to whom these presents may come, greeting.

That I, Henry J. Rogers, trustee, do hereby release and discharge and forever quit-claim, any and all demands, claims and causes of action whatsoever at law or in equity against Edward Houstoun, deceasd, late of Savannah, Georgia, or against the estate, executors or other legal representatives of the said Houstoun, or his heirs at law, and especially do I release and discharge the said Houstoun, his estate and his said executors, heirs and legal representatives from any and all demands in law or in equity for and on account of a certain 4,370 shares of stock of the Florida Central Railroad Company and a certain $103,000 of the bonds of the Pensacola and Georgia Railroad Company, being the same stock and bonds described in a certain proceedings and suit by me or in my name and behalf in the Supreme Court or any other Court of the State of New York, and described in a certain suit on the part of the said Edward Houstoun in the Supreme Court of Chatham County, Georgia, to which I am a party, and in certain suits in the Circuit Court of the United States for the Northern District of Florida, to which I am also a party, and being the same stock and bonds described in a certain declaration of trust by said Houstoun to Mariano D. Papy, dated the 12th day of April, 1871, signed by Edward Houstoun and S. W. Hopkins; and the same stock and
87 bonds also mentioned in a certain release and transfer of Milton S. Littlefield signed by S. W. Hopkins & Co., on the 14th day of June, 1872; and the same stock and bonds described in a certain acknowledgment of trust by said M. D. Papy, on the 9th day of May, 1871; and the same stock and bonds described in a certain further assignment and transfer in trust by Milton S. Littlefield, to me as trustee, on the 18th day of June, 1872, and a subject of a decree in the said Circuit Court of the United States for the Northern District of Florida sustaining said trust, dated December 2, 1873; hereby releasing in full in addition to the said Houstoun, his heirs, executors and estate as aforesaid, said Mariano D. Papy, his executrix, Fanny S. Papy, and his estate and heirs at law, from the further discharge of said trust, and for and on account of the said stock and bonds in any

manner, or for any cause whatsoever, and especially for and on account of the said suits and proceedings or any of them hereinafter mentioned. This my said release being absolute and positive for all purposes, and in the event of any omission herein, or further release being required, I hereby authorize my counsel, Joseph B. Stewart, to supply and execute the same in my name and behalf as fully and completely as if I were personally present, and to affix my name and seal thereto; hereby fully affirming my said release, and ratifying the acts of my said counsel in any further execution thereof, that may be deemed meet and proper in the premises.

In testimony whereof, I have hereunto set my hand and seal this sixth day of January, 1877.

[SEAL.] HENRY J. ROGERS, Trustee.

Signed and sealed in the presence of

88 GEO. C. LLOYD.

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

On this 6th day of January, in the year 1877, before me personally came Henry J. Rogers, trustee, to me known to be the person mentioned and described in, and who executed the foregoing release and acknowledged to me that he executed the same for the use and purposes therein mentioned.

[SEAL.] GEO. C. LLOYD,
Notary Public,
New York County, N. Y.

[Endorsed:] Henry J. Rogers, Trustee. Copy. General Release. Filed April 30, 1877. P. Walter, Clerk.

In Supreme Court United States.

89 CALVIN LITTLEFIELD, *Appellant*,
vs.
WM D. BLOXHAM, *et al.*, TRUSTEES INTERNAL IMPROVEMENT FUND, *Appellees*.—No. 155.

EDWARD J. REED, *Appellant*,
vs.
WM. D. BLOXHAM, *et al.*, TRUSTEES INTERNAL IMPROVEMENT FUND, *Appellees*.—No. 174.

We, the undersigned, hereby stipulate and consent that all the pleadings, documents and papers certified to by Philip Walter, as Clerk of the Circuit Court of the United States for the Northern District of Florida, under the seal of said Court, as being true and correct copies of the originals on file in said Court, and certified on the 7th day of December, A. D. 1885, may be treated and considered as a part of the record in either of the above entitled causes numbered 155 and 174, with like force and effect as if the same had been brought into the said Supreme Court of the United States in each of said cases numbered as aforesaid, by a writ of certiorari duly issued and returned according to the practice of the said Court.

And it is further stipulated and agreed, that in December, A. D. 1881, Thomas L. Clingman, L. B. Bayne & Co. and Henry J. Rogers, trustee, executed and delivered to Edward J. Reed releases in full of all claims and interest whatever that they might have, or either
90 of them had, in and to the bonds in this controversy, and that such releases were in evidence before the Court on the hearing of this cause.

And the undersigned,
the solicitors of the appellees in the said cause, do further stipulate and agree hereby to waive all objections to the order of said Supreme Court in the cause numbered 155, granting leave to the appellant therein to withdraw the record for the purpose of attaching a proper certificate of the Clerk of the said Circuit Court thereto.

In witness whereof, we have hereunto set our hands and seals this 21st day of December, A. D. 1885.

E. A. PERRY,
Attorney for Trustees I. I. Fund.
H. BISBEE,
Solicitor for Calvin Littlefield.
JOHN A. HENDERSON,
Solicitor for Sir Edward J. Reed.

[Endorsed:] Calvin Littlefield *vs.* Wm. D. Bloxham, Trustee I. I Fund. Stipulation.

100 In the Circuit Court of the United States, 5th Judicial Circuit, Northern District of Florida.
Nos. 155—174.

I, Philip Walter, Clerk of the Circuit Court of the United States, 5th Circuit, Northern District of Florida, do hereby certify that the foregoing pages numbered from one to forty-two, inclusive, constitute true copies of the originals on file in my office in the case of Edward C. Anderson Jr., *et al.*, vs. the Trustees of the Internal Improvement Fund of the State of Florida, *et al.*, in the matter of the intervention by petition of Calvin Littlefield and Robert J. Washington, trustee, as appears upon the files and records of my office.

Witness my hand and official seal at the City of Jacksonville, in the District and Circuit aforesaid, this 7th day of December, 1885, and of our Independence the 110th year.

PHILIP WALTER.
Clerk.

CIRCUIT COURT SEAL.

INDEX.

	PAGE.
Order of Justice Bradley requiring claimants of bonds to file their petition with A. Doggett, Examiner	1
Notice by A. Doggett, Examiner, to claimants of bonds to file petition with him	2
Petition of Marcellus L. Stearns, Governor, sitting, that State of Florida is the owner of the 103 bonds	2
Petition of Robert J. Washington asserting claim to 103 bonds	5
Petition of James P. Houstoun, *et al*, Executor of Edward Houstoun, asserting interest in 103 bonds	6
Petition of Henry J. Rogers, Trustee, asserting claim to 103 bonds	11
Second petition of Henry J. Rogers, Trustee, asserting claim to 103 bonds	15
Notice of A. Doggett, Examiner, to claimant of bonds to file their petition with him	19
Exhibit B. an agreement dated June 14th, 1872, between J. P. & M. R. R. Co., L. P. Bayne & Co., *et al*	20
Schedule A. referred to in the foregoing agreement between J. P. & M. R. R. Co., L. P. Bayne & Co., *et al*	23
Release of S. W. Hopkins & Co., to Milton S. Littlefield of their interest in 103 bonds dated 14th day of June, 1872	24
Schedule B. referred to in the foregoing agreement between J. P. & M. R. R. Co. and L. P. Bayne & Co., *et al*	24
Releases of stockholders of J. P. & M. R R. Co.	25
Affidavit of Milton S. Littlefield	25
Transfer of 103 bonds to Henry J. Rogers in trust	26
Decree in case of John Collinson vs. Sydney W. Hopkins, *et al*, composing the firm of S. W. Hopkins & Co, *et al*	27
Order of Justice Bradley allowing petition of Henry J. Rogers	29
Affidavit of Thomas L. Clingman dated December 1st, 1875	30
Decree of Circuit Court Duval County case of Trustees I. I. Fund vs. J. P. & M. R. R. Co., *et al*	31
Agreement between Edward Houstoun and Milton S. Littlefield, Pres. J. P. & M. R. R. Co., dated May 3th, 1870	35
Agreement between Edward Houstoun and M S. Littlefield, dated June 14th. 1870.	36
General release by L. P. Bayne and L. P. Bayne & Co	38
General Release by Henry J. Rogers, Trustee	39